

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RAILCAR MANAGEMENT, LLC,

Plaintiff,

v.

CEDAR AI, INC., MARIO PONTICELLO, DARIL  
VILHENA, and YI CHEN,

Defendants.

Case No. 2:21-cv-00437-TSZ

**DEFENDANTS CEDAR AI, INC., MARIO  
PONTICELLO, DARIL VILHENA, AND YI  
CHEN'S ANSWER AND AFFIRMATIVE  
DEFENSES TO RAILCAR MANAGEMENT,  
LLC'S SECOND AMENDED COMPLAINT  
AND DEFENDANT CEDAR AI, INC.'S  
COUNTERCLAIM AND THIRD-PARTY  
COMPLAINT**

CEDAR AI, INC.,

Counterclaim Plaintiff,

v.

RAILCAR MANAGEMENT, LLC, WABTEC  
CORPORATION,

Counterclaim and Third-  
Party Defendants.

**JURY DEMAND REQUESTED**

DEFENDANTS CEDAR AI, INC. ("Cedar"), MARIO PONTICELLO, DARIL VILHENA, and YI  
CHEN (collectively, "Defendants"), by and through the undersigned counsel, file this Answer  
and Affirmative Defenses. Counterclaim Plaintiff CEDAR AI, INC. alleges the following

Counterclaims against RAILCAR MANAGEMENT, LLC ("RMI"), and Third-Party Complaint against WABTEC CORPORATION ("Wabtec").

**GENERAL DENIAL AND ANSWER**

Defendants generally deny each and every allegation in the Second Amended Complaint (ECF No. 99) that requires a response except those items specifically admitted herein. Defendants respond to each allegation of the Second Amended Complaint as follows:

**ANSWER**

1. The preliminary information RMI has obtained in this lawsuit confirms that Cedar and the individual Defendants have been engaging in unlawful, unfair, and unscrupulous business practices attempting to poach RMI's RailConnect Transportation Management System ("TMS"), in violation of both federal and state laws.

**ANSWER: Deny.**

2. RMI's TMS is a core operational system for railroads that helps them maximize performance by automating day-to-day operations. Rail operators use RMI's TMS to manage their rail and intermodal operations, signal communication assets, railcar repair billing and inventory, and multi-modal visibility, planning, and execution for industrial shippers and logistics service providers.

**ANSWER: Defendants admit only that RMI's TMS is a transportation management system for railroads. Defendants lack knowledge regarding the remaining allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

3. Cedar also offers rail companies a transportation management system. Cedar claims that its system is the first to leverage artificial intelligence to present users with suggestions for handling traffic and customer billing. Since its inception, Cedar has hired multiple former employees of RMI's former and current parent company, General Electric Company and Wabtec Corporation ("Wabtec"), respectively.

**ANSWER: Defendants admit that Cedar offers rail companies a transportation management system and that Cedar's system leverages artificial intelligence to present users with suggestions for handling traffic and customer billing. Defendants also admit that Cedar hired individuals who approached Cedar regarding job opportunities after having worked for RMI and General Electric Company ("GE"), which merged with Wabtec in 2019. The remaining allegations in this paragraph are denied.**

4. In March 2020, Wabtec sent a letter to Cedar's co-chief executive officers ("co-CEOs"), Ponticello and Vilhena, stating that it "has strong concerns about the potential misuse of Wabtec confidential and proprietary data." Wabtec's letter specifically identified an "unauthorized data feed" (i.e., a snapshot data feed) utilized by Cedar that Wabtec discovered and disabled, and noted that the "exfiltrated data was and remains Wabtec confidential and proprietary data ... whether in physical or electronic form, be immediately destroyed." Ponticello responded to Wabtec's letter in April 2020. He affirmed that "we do not have access to any of your confidential and proprietary data."

**ANSWER: Defendants admit that Wabtec sent a letter to Messrs. Ponticello and Vilhena in March 2020. Defendants admit that Mr. Ponticello refuted Wabtec's allegations and affirmed Cedar did "not have access to any of [RMI's] confidential and proprietary data." Defendants affirmatively allege that the information contained in the snapshot data feeds was owned by individual railroads, and not owned by RMI, as reflected in the terms of RMI's customer contracts for its RailConnect TMS services. See Exhibit A at ¶ 6(b), Exhibits B – D at ¶ 7(b). Defendants further allege that the snapshot data feeds thus did not contain any of RMI's confidential and proprietary data. Defendants deny that Cedar's access to snapshot data feeds for any of the railroads was "unauthorized," and affirmatively allege that RMI not only knew that Cedar was accessing such feeds, but authorized Cedar's access. Moreover, Defendants affirmatively allege that Wabtec's March 2020 letter did not expressly revoke Cedar's authorization to access the snapshot data feeds for the railroad customers who had**

1 **been using Cedar’s product, Optiswitch. The remaining allegations in this paragraph are**  
 2 **denied.**

3 5. RMI initiated this lawsuit after it detected highly unusual and significantly  
 4 harmful activity on its TMS servers—i.e., more frequent logins to the platform and an abnormal  
 5 spike in the frequency and volume of snapshot data downloaded from certain customers’  
 6 accounts. Its investigation of that activity identified Amazon Web Services (“AWS”)-owned IP  
 7 addresses for the devices connected to the suspicious logins and downloads. With the Court’s  
 8 permission, RMI subpoenaed AWS to identify the owners of these IP addresses.

9 **ANSWER: Defendants lack knowledge regarding the allegations in this paragraph and**  
 10 **therefore are unable to admit or deny. To the extent a response is required, deny.**

11 6. Information produced by AWS in response to the subpoena, attached as Exhibit  
 12 1, revealed that Cedar owns the IP addresses in question, that the account for those IP  
 13 addresses is registered to Vilhena, and that Ponticello is the billing contact for the account.

14 **ANSWER: Admit.**

15 7. The information from AWS conclusively proves that Cedar both accessed RMI’s  
 16 computer systems without RMI’s authorization and downloaded data many months before RMI  
 17 detected the activity. Cedar has since confirmed that it used an AWS application to regularly  
 18 access RMI’s snapshot data feeds, download data, and upload them to an AWS cloud storage  
 19 application—and that Cedar did not stop even after receiving Wabtec’s March 2020 letter.

20 **ANSWER: Defendants admit only that Cedar accessed snapshot data feeds for certain**  
 21 **railroads from an external FTP server using an AWS application and stored the snapshot data**  
 22 **files in an AWS cloud storage application, both before and after receiving Wabtec’s March**  
 23 **2020 letter. Defendants deny that Cedar accessed RMI’s computer systems or the snapshot**  
 24 **data feeds without authorization, and deny that Wabtec’s March 2020 letter revoked Cedar’s**  
 25 **authorization to access any of the snapshot data feeds. Defendants affirmatively allege that**  
 26 **RMI not only knew Cedar was accessing certain railroads’ data feeds, but authorized Cedar’s**  
 27

1 access of the data feeds. Defendants lack knowledge regarding the remaining allegations in  
 2 this paragraph and therefore are unable to admit or deny. To the extent a response is  
 3 required, deny.

4 8. Cedar has also confirmed that its chief technology officer, Yi Chen, changed the  
 5 pull frequency for the snapshot data feeds on November 1, 2020 (more than six months after  
 6 receiving Wabtec's March 2020 letter). On information and belief, Cedar, including its  
 7 consultant David McCrory, used their unauthorized access to RMI's systems, and the data it  
 8 retrieved from them to gain a competitive advantage when performing demonstrations for  
 9 RMI's customers. In other words, Cedar used illegal activity and the proprietary data that it  
 10 stole from RMI to then compete with RMI. On information and belief, the individual  
 11 Defendants were personally involved in, directed, or approved of this unlawful activity.

12 **ANSWER:** Defendants deny that Yi Chen changed the pull frequency for the snapshot  
 13 data feeds on November 1, 2020. Defendants affirmatively allege that Mr. Chen changed the  
 14 pull frequency of the snapshot data feeds on December 10, 2019. Defendants deny that  
 15 Cedar's access to the snapshot data feeds was unauthorized, and deny that the snapshot data  
 16 feeds contained RMI's confidential or proprietary data. Defendants deny that any data  
 17 contained in the snapshot data feeds could be or was used by Cedar to gain a competitive  
 18 advantage over, or to compete with, RMI. Defendants deny that David McCrory ever  
 19 accessed RMI's systems or RailConnect TMS without authorization, or accessed RailConnect  
 20 TMS on Cedar's behalf, at Cedar's direction, or in connection with his work for Cedar. See ECF  
 21 No. 95-1 ¶ 8. Defendants deny that Mr. McCrory, while he was a consultant for Cedar, ever  
 22 accessed or utilized RMI's FTP server or the snapshot data feeds that Cedar was authorized to  
 23 access. See *id.* ¶ 12. Defendants deny that Mr. McCrory ever used RMI data when  
 24 performing demonstrations for customers. See *id.* ¶¶ 9-10. Defendants further deny that  
 25 they engaged in any illegal activity or stole proprietary data from RMI. Defendants deny the  
 26 remaining allegations in this paragraph.

9. Cedar and the individual Defendants' actions violate the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.* and the Stored Communications Act, 18 U.S.C. § 2701 *et seq.*, 18 U.S.C. § 1836 *et seq.*, both of which in addition to providing the civil causes of action stated below, impose criminal liability on intruders like Cedar. RMI also brings claims under the Defend Trade Secrets Act, 18 U.S.C. § 1836 *et seq.*, and the laws of Washington for misappropriation of trade secrets, unfair competition, tortious interference, trespass, and negligence.

**ANSWER: This paragraph consists of legal conclusions to which no response is required. To the extent a response is required, deny.**

10. RMI seeks compensatory damages for the multimillion-dollar losses it has sustained due to Defendants' unlawful and improper conduct; punitive damages; preliminary and permanent relief barring Cedar from, among other things, accessing TMS and soliciting RMI's customers using stolen data; reasonable attorneys' fees and costs; and pre-and post-judgment interest.

**ANSWER: This paragraph consists of legal conclusions to which no response is required. To the extent a response is required, deny.**

#### JURISDICTION AND VENUE

11. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises from Defendants' violation of the federal statutes identified in this Second Amended Complaint.

**ANSWER: This paragraph consists of legal conclusions to which no response is required.**

12. This action also arises under the laws of Washington. This Court has jurisdiction over those claims under 28 U.S.C. § 1367 because Defendants' conduct giving rise to the state law claims are the same as or related to the activities giving rise to the claims arising under federal law such that they form part of the same case or controversy.

**ANSWER: This paragraph consists of legal conclusions to which no response is required.**

13. Venue for RMI's claims is proper in this district under 28 U.S.C. § 1391(b) because Cedar's principal place of business is in Seattle, Washington, located in this district. The individual Defendants also reside or work for any employer located in Seattle, Washington. In addition, events giving rise to this action occurred in Bothell, Washington, located within this district. For example, one of the Defendants logged into TMS from Bothell, Washington, and improperly downloaded RMI's data.

**ANSWER: This paragraph consists of legal conclusions to which no response is required. To the extent a response is required, Defendants admit that Cedar's principal place of business is located in Seattle, Washington, that at least one of the individual Defendants resides in Seattle, Washington, and that venue is proper in this district under 28 U.S.C. § 1391(b). To the extent not expressly admitted, deny.**

#### **PARTIES**

14. RMI is a subsidiary of Wabtec, a leading global provider of equipment, systems, digital solutions, and other freight and transit rail services. RMI delivers software and related solutions to optimize its customers' railway operating and maintenance activities. RMI is and was at all times relevant to this action a limited liability company incorporated under the laws of Georgia with its principal place of business in Atlanta, Georgia.

**ANSWER: Defendants lack knowledge regarding the allegations in this paragraph and therefore are unable to admit or deny.**

15. Cedar, which offers service and technology to the rail industry, is incorporated under the laws of Delaware and has a principal place of business in Seattle, Washington.

**ANSWER: Admit.**

16. Mario Ponticello is Cedar's co-CEO and chief financial officer. Ponticello resides in Seattle, Washington.

**ANSWER: Defendants admit that Mr. Ponticello is Cedar’s co-CEO and Chief Financial Officer. Defendants deny that Mr. Ponticello resides in Seattle, Washington.**

17. Daril Vilhena is Cedar’s co-CEO. Vilhena resides in Seattle, Washington.

**ANSWER: Admit.**

18. Yi Chen is Cedar’s CTO. Chen, on information and belief, resides in or around Seattle, Washington.<sup>1</sup>

**ANSWER: Defendants admit that Mr. Chen is Cedar’s Chief Technology Officer, and admit that Mr. Chen lives in Seattle, Washington. Defendants deny the allegation in footnote 1 that Cedar has provided only limited information in response to RMI’s discovery requests regarding the identities of any other defendants.**

## BACKGROUND

### *RMI’s TMS*

19. As a core operating and communications system, TMS automates and tracks the entry of rail car movements and switching operations for RMI’s rail customers and provides them high visibility over all rail assets.

**ANSWER: Defendants admit only that RMI’s TMS is a transportation management system for railroads, which like any other railroad transportation management system, tracks the entry of rail car movements and switching operations for certain railroads. Defendants lack knowledge regarding the remaining allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

20. TMS contains data relating to, among other things, customers’ rail cars, including content and location, routing and railroad information, and the origins and destination of rail cars, and proprietary data derived from the raw data RMI collects (collectively, the “Data”). The

---

<sup>1</sup> RMI has sought via discovery the identities of any other defendants. To date, Cedar has provided only limited information in response to RMI’s requests. RMI reserves the right to seek leave to join additional parties based on information learned in discovery.



1 Data is stored in on-premises systems located near Atlanta, Georgia, as well as on back-up on-  
2 premises systems located in Ohio.

3 **ANSWER: Defendants admit only that RMI-authorized snapshots related to certain**  
4 **railroads, which were uploaded to an external FTP server, contain data relating to customers'**  
5 **rail cars, including content and location, routing and railroad information, and the origins and**  
6 **destinations of rail cars. Defendants deny that TMS Data is confidential or proprietary to**  
7 **RMI. Defendants further allege that the TMS Data is owned by the individual railroad**  
8 **customers, and not owned by RMI, as reflected in the terms of RMI's customer contracts for**  
9 **its RailConnect TMS services. See Ex. A at ¶ 6(b), Exs. B – D at ¶ 7(b). Defendants lack**  
10 **knowledge regarding the remaining allegations in this paragraph, including where the Data**  
11 **might be stored, and therefore are unable to admit or deny. To the extent a response is**  
12 **required, deny.**

13 21. RMI's rail customers with properly authorized credentials access TMS via a  
14 website interface hosted by AWS, a well-known provider of on-demand cloud computing  
15 platforms and application programming interfaces to individuals, companies, and governments.  
16 RMI customers with properly authorized credentials may also access folders that contain  
17 certain Data extracted from TMS via file transfer protocol ("FTP") at ftp.railconnect.com (the  
18 "RailConnect FTP Site"). Some of the extracted Data is called snapshot data.

19 **ANSWER: Defendants admit that some of the data extracted from TMS and accessible**  
20 **via the RailConnect FTP Site is called snapshot data. Defendants affirmatively allege that RMI**  
21 **employees and/or RMI's railroad customers authorized and provided Cedar with login**  
22 **credentials to access the snapshot data feeds via the RailConnect FTP Site for certain railroad**  
23 **customers with those customers' permission. Defendants allege that the login credentials**  
24 **used to access TMS are distinct from the login credentials used to access the RailConnect FTP**  
25 **Site. See Declaration of Steve Murray ("Murray Decl.") ¶¶ 10, 13. Defendants lack**

1 knowledge regarding the remaining allegations in this paragraph and therefore are unable to  
2 admit or deny. To the extent a response is required, deny.

3 22. RMI assigns each of its rail customers unique login credentials to access TMS and  
4 the RailConnect FTP Site, and only RMI can authorize someone to use the credentials to enter  
5 them. Indeed, RMI and its customers expressly agree in written contracts that customers will  
6 keep their login credentials strictly confidential.

7 **ANSWER: Defendants admit only that RMI assigns each of its rail customers unique**  
8 **login credentials to access RailConnect TMS and the external FTP server. Defendants**  
9 **affirmatively allege that the login credentials used to access the RailConnect FTP Site are**  
10 **distinct from the login credentials used to access RailConnect TMS. See Murray Decl. ¶¶ 10,**  
11 **13. Defendants further affirmatively allege that RMI created the RailConnect FTP Site**  
12 **specifically for third party vendors to access and use data owned by railroad customers that**  
13 **has been exported from TMS. Id. ¶ 8. Defendants further allege that, to the extent**  
14 **customers had any contractual obligation to keep their login credentials confidential, that**  
15 **applied only to RailConnect TMS, not to login credentials for the external FTP server.**  
16 **Defendants lack knowledge regarding the remaining allegations in this paragraph, and**  
17 **therefore are unable to admit or deny. To the extent a response is required, deny.**

18 23. Furthermore, TMS conspicuously and explicitly warns those logging into the  
19 system that they must have RMI's permission to use it:

20 You have accessed the RMI computer system. Access or use of  
21 this system is strictly limited to persons having express  
22 authorization from RMI. Unauthorized access or use of this  
system is unlawful and strictly prohibited.

23 **ANSWER: Defendants affirmatively allege that the warning message described in this**  
24 **paragraph is not displayed when one logs into the RailConnect FTP Site, rather than**  
25 **RailConnect TMS. Defendants affirmatively allege that Cedar was authorized to access the**  
26 **RailConnect FTP Site for certain railroad customers that piloted Optiswitch. Defendants**  
27

1 further affirmatively allege that RMI knew that Cedar was accessing snapshot data feeds from  
 2 the RailConnect FTP Site for certain railroads because RMI and/or the railroad customers had  
 3 authorized it. Defendants lack knowledge regarding the remaining allegations in this  
 4 paragraph and therefore are unable to admit or deny. To the extent a response is required,  
 5 deny.

6 *The Suspicious and Harmful Activity*

7 24. While RMI's rail customers routinely access and/or download Data on the  
 8 RailConnect FTP Site, on or about November 1, 2020, RMI identified an unusual spike in the  
 9 frequency and volume of downloads. The incident caused significant and costly damage to  
 10 RMI, including loss of access to its TMS servers, that required RMI to engage in significant and  
 11 costly remediation efforts.

12 **ANSWER:** Defendants affirmatively allege that the snapshot data feeds are hosted on  
 13 an external FTP server that is separate from RMI's TMS computer system. See Murray Decl.  
 14 ¶¶ 9, 12. Defendants deny that any spike in activity on the RailConnect FTP Site caused harm  
 15 to RMI or RailConnect TMS. Defendants lack knowledge regarding the remaining allegations  
 16 in this paragraph and therefore are unable to admit or deny. To the extent a response is  
 17 required, deny.

18 25. After conducting a preliminary investigation, RMI observed that the unusual  
 19 activity was triggered by devices oddly requesting simultaneous file downloads from multiple  
 20 customer accounts, each with unique customer login credentials.

21 **ANSWER:** Defendants lack knowledge regarding the allegations in this paragraph and  
 22 therefore are unable to admit or deny. To the extent a response is required, deny.

23 26. Several of RMI's rail customers said they had not logged onto the RailConnect  
 24 FTP Site and downloaded Data. Accordingly, RMI launched an internal investigation to verify  
 25 that the downloads it observed were indeed illegitimate and to determine whether an  
 26 unauthorized person accessed TMS.

**ANSWER: Defendants deny that any of Cedar's downloads from the RailConnect FTP Site were illegitimate or unauthorized. Defendants lack knowledge regarding the remaining allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

*Forensic Investigation*

27. On or about November 6, 2020, RMI retained an outside vendor to conduct a forensic investigation to further assess the suspicious activity on TMS. As part of the investigation, the vendor analyzed RMI's logs and forensic images and deployed endpoint software to capture IP addresses and other pertinent information.

**ANSWER: Defendants lack knowledge regarding the allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

28. RMI discovered through this investigation that there were logins to the RailConnect FTP Site from more than 200 IP addresses owned by AWS from November 1, 2020, to November 3, 2020.

**ANSWER: Defendants lack knowledge regarding the allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

29. RMI also discovered that another series of unexplained logins to the RailConnect FTP Site and Data downloads occurred from other AWS-owned IP addresses, and at least 23 IP addresses owned by conventional Internet service providers, well before it detected the unusual activity in November 2020. IP addresses that logged into RailConnect FTP Site from locations in Washington were responsible for much of the suspicious activity.

**ANSWER: Defendants lack knowledge regarding the allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

*AWS Subpoena and Confidential Information on Cedar's Website*

30. RMI moved for expedited discovery at the same time it filed the original complaint. After the Court granted that motion, RMI served AWS with a subpoena requesting

information to identify the individuals responsible for the suspicious logins and downloads. In particular, RMI asked that AWS identify the persons associated with the 20 unique IP addresses that were most active during the peak of the suspicious activity and Data downloads.

**ANSWER: Defendants lack knowledge regarding the allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**


31. AWS responded to the subpoena on June 10, 2021, providing the account registration information associated with the 20 IP addresses RMI identified.

**ANSWER: Defendants lack knowledge regarding the allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

32. AWS's response confirms, as RMI had suspected, that Cedar owns the IP addresses that accessed the RailConnect FTP Site and downloaded Data during the suspicious activity RMI detected. The response also indicated that the related account is registered to Vilhena, and Ponticello is listed as the billing contact for the account. See Ex. 1.

**ANSWER: Defendants admit only that they have an account with AWS that is registered to Mr. Vilhena and for which Mr. Ponticello is listed as the billing contact. Defendants deny there was anything suspicious about the activity RMI detected. Defendants affirmatively allege that RMI knew all along that Cedar was accessing snapshot feeds from the RailConnect FTP Site for certain railroads because RMI had authorized Cedar's access and provided Cedar login credentials. Defendants lack knowledge regarding the remaining allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

33. While waiting for information from AWS, RMI obtained proof that Cedar also accessed TMS without permission. Cedar posted a graphic to its website that depicted a TMS database. As shown in the far-right column below, the "User" Cedar identified on the picture is "RMIJET," which is an authentic and unique TMS user identification for one of RMI's current employees. The only way Cedar would have this confidential information is if it accessed TMS.



Station	Zone	Name	Type	User	Op
ABERDMS	YD	YARD	Y	RMIJET	3/1
ALPINTX	YARD	ALPIN TEXAS	Y	RMIJET	3/1
AMSTEMO	YARD	AMSTERDAM NO.	Y	RMIJET	3/1
ANDRES	CLASIF	CLASSIFICATION	C	RMIJET	3/1
ANDRES	INTERC	SWITCHING DISTRIC	S	RMIJET	3/1
ANDRES	PATIO	YARD	Y	RMIJET	3/1
ANT	961	ZONA 961	Y	RMIJET	3/1
ATHENS	BBFX	ZONA 962	Y	RMIJET	3/1
AUSTIN	YD	ATHENS	Y	RMIJET	3/1
AUSTIN	CALSSI	CLASSIFICATION	C	RMIJET	3/1
A0867	GRALYD	PATIO	C	RMIJET	3/1
A0947	PUBLIC	VIAS PUBLICO	Y	RMIJET	3/1
A0353	YD	YARD	Y	RMIJET	3/1
A0353	91	PATIO 961	Y	RMIJET	3/1

**ANSWER:** Defendants admit only that Cedar copied the graphic from a publicly available image that was posted on RMI's support website. Defendants deny Cedar improperly accessed what RMI claims is purportedly "an authentic and unique TMS user identification for one of RMI's current employees." Defendants allege that the publicly-posted graphic included the user identification "RMIJET." Defendants lack knowledge regarding the remaining allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.

34. As noted above, on March 31, 2020, Wabtec sent a letter to Ponticello and Vilhena, putting them personally, along with Cedar, on notice of RMI's "strong concerns about the potential misuse of Wabtec confidential and proprietary data." Wabtec's letter specifically identified an "unauthorized data feed" utilized by Cedar that Wabtec had discovered and disabled, and noted that the "exfiltrated data was and remains Wabtec confidential and proprietary data." Thus, Cedar was aware that Wabtec considered Data downloaded via the

RailConnect FTP Site “confidential and proprietary.” The March 31, 2020 letter is attached as Exhibit 2.

**ANSWER: Defendants admit only that Wabtec sent a letter dated March 31, 2020 to Messrs. Ponticello and Vilhena. Defendants affirmatively allege that the information contained in the snapshot data feeds was owned by individual railroad customers, and not owned by RMI, as reflected in the terms of RMI’s customer contracts for its RailConnect TMS services. See Ex. A at ¶ 6(b), Exs. B – D at ¶ 7(b). Defendants further allege that the snapshot data feeds did not contain any RMI confidential and proprietary data. Defendants deny that Cedar’s access to snapshot data feeds for certain railroads was unauthorized, and affirmatively allege that RMI not only knew that Cedar was accessing such feeds, but authorized Cedar’s access. Moreover, Defendants allege that Wabtec’s March 2020 letter did not expressly revoke Cedar’s authorization to access the snapshot data feeds for the railroad customers who had been using Cedar’s product, Optiswitch. Defendants deny that Cedar or any of its employees misused any of RMI/Wabtec’s confidential or proprietary data. To the extent not expressly admitted, the remaining allegations in this paragraph are denied.**

35. Wabtec further demanded in the letter that any “Wabtec confidential and proprietary data ... whether in physical or electronic form, be immediately destroyed.” Ponticello denied any wrongdoing by Cedar. In an April 14, 2020 letter, attached as Exhibit 3, he stated that, “to our knowledge,” Cedar did not have “access to any of [RMI’s] confidential and proprietary data.”

**ANSWER: Defendants admit only that Wabtec sent a letter dated March 31, 2020 to Messrs. Ponticello and Vilhena, and that Mr. Ponticello sent Wabtec a letter dated April 14, 2020. Defendants affirmatively allege that the information contained in the snapshot data feeds was owned by individual railroad customers, and not owned by RMI, as reflected in the terms of RMI’s customer contracts for its RailConnect TMS services. See Ex. A at ¶ 6(b), Exs. B**

– D at ¶ 7(b). Defendants further affirmatively allege that the snapshot data feeds did not contain any RMI confidential and proprietary data.

36. Despite Ponticello's claim, Defendants had been accessing the RailConnect FTP Site to download Data at or about the time Ponticello told RMI that Cedar did not have access to RMI's proprietary data. Ponticello's statement is contradicted by the information AWS provided showing that it assigned Cedar the IP addresses for the devices used to access TMS and download Data during the unusual activity RMI detected. *See* Ex. 1.

**ANSWER: Defendants admit only that Cedar accessed snapshot data files pertaining to certain railroads stored on the RailConnect FTP Site, with RMI's and the railroads' authorization. Defendants affirmatively allege that the snapshot data feeds did not contain any RMI proprietary data, based in part on the terms of RMI's customer contracts for its RailConnect TMS services. *See* Ex. A at ¶ 6(b), Exs. B – D at ¶ 7(b). Defendants deny they ever accessed RailConnect TMS to download data. Defendants further deny that the information AWS provided shows that IP addresses assigned to Cedar were used to access RailConnect TMS or download data directly from RailConnect TMS in November 2020. Defendants lack knowledge regarding the remaining allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

37. Cedar has since confirmed that it used an AWS application to regularly access and download snapshot data feeds and upload the files to an AWS cloud storage application. Starting in at least 2018 and 2019, Cedar set up a program to access and upload Data from the RailConnect FTP Site for at least 15 railroads. Even after receiving Wabtec's March 2020 letter, *see* Ex. 2, Cedar did not stop logging into the RailConnect FTP Site and downloading Data. Accordingly, until November 2020, Cedar continued to access and upload Data from the RailConnect FTP Site.

**ANSWER: Defendants admit that Cedar used an AWS application to access and download snapshot data feeds for certain railroads with RMI's authorization, and stored the**



1 snapshot files in an AWS cloud storage application. Defendants admit that at various times in  
 2 2018 and 2019, Cedar set up a program to access, download, and upload snapshot data files  
 3 from the RailConnect FTP Site for up to 15 railroads. Defendants deny that Cedar's access to  
 4 snapshot data feeds for certain railroads was unauthorized, and affirmatively allege that RMI  
 5 and the railroads authorized Cedar to access the snapshot data feeds for those 15 railroads.  
 6 Defendants affirmatively allege that the information contained in the snapshot data feeds  
 7 was owned by individual railroad customers, and not owned by RMI, as reflected in the terms  
 8 of RMI's customer contracts for its RailConnect TMS services. See Ex. A at ¶ 6(b), Exs. B – D at  
 9 ¶ 7(b). Defendants further affirmatively allege that the snapshot data feeds did not contain  
 10 any RMI confidential and proprietary data. Moreover, Defendants allege that Wabtec's  
 11 March 2020 letter did not revoke Cedar's authorization to access the snapshot data feeds for  
 12 the railroad customers who had been using Cedar's product, Optiswitch. Defendants admit  
 13 that the AWS application continued to access some of the snapshot data feeds until  
 14 November 2, 2020. To the extent not expressly admitted, deny.

15 38. Cedar has since confirmed that Chen changed the "pull frequency" on the program  
 16 Cedar set up to download Data—i.e., Chen made a change that resulted in Cedar accessing and  
 17 updating Data on a much more frequent basis. Chen made this change on November 1, 2020—  
 18 more than six months after receiving Wabtec's March 2020 letter.

19 **ANSWER:** Defendants admit only that Mr. Chen changed the "pull frequency" on the  
 20 program Cedar created to automatically check for and download new snapshot data files.  
 21 Defendants deny that the pull frequency change occurred on November 1, 2020. Instead,  
 22 Defendants allege that Mr. Chen changed the pull frequency on December 10, 2019. To the  
 23 extent not expressly admitted, deny.

24 39. Chen's actions in increasing the pull frequency triggered the highly unusual and  
 25 significantly harmful spike in activity in November 2020.

**ANSWER:** Defendants deny that Mr. Chen changing the pull frequency on December 10, 2019, triggered any purported spike in activity on RMI's servers. Defendants further deny that any purported spike in activity was harmful to RMI or RailConnect TMS. Defendants affirmatively allege that the snapshot data feeds are hosted on an external FTP server that is separate from RMI's TMS computer system. See Murray Decl. ¶¶ 9, 12. Defendants deny that any purported spike in activity on the RailConnect FTP Site caused any harm to RailConnect TMS. The remaining allegations in this paragraph are denied.

40. As recently as June 2022 (more than a year after this litigation began), representatives of Cedar have continued to access of RMI's systems without authorization or in excess of any authorized access. For example, the User ID PTRADD, assigned to McCrory (who formerly worked for a customer of RMI, Port Terminal Railroad Association, and currently acts as a consultant for Cedar), accessed TMS as recently as June 9, 2022. Likewise, the User ID "Gray, Gray, Gray," which, upon information and belief, is used by Grace Cobbinah (who formerly worked at Wabtec and now works at Cedar), accessed TMS as recently as March 24, 2022.

**ANSWER:** Defendants admit that David McCrory is a former employee of Port Terminal Railroad Association (PTRA) and currently works as a consultant for Cedar. See ECF No. 95-1 ¶¶ 3, 7. Defendants affirmatively allege that beginning in January 2022, Mr. McCrory was contracted to provide as-needed technical support services for RailConnect TMS to PTRA. See *id.* ¶ 4. Defendants admit that Mr. McCrory was assigned the TMS User ID PTRADD, which he was authorized to use throughout his employment at PTRA from 2010 to December 2021 and as an independent contractor for PTRA. See *id.* ¶ 6. Defendants admit that on June 9, 2022, Mr. McCrory accessed RailConnect TMS using his PTRADD User ID at PTRA's request in order to fix a "customer entry that was not setup in the system correctly." *Id.* ¶ 5. Defendants affirmatively allege that Mr. McCrory has "never used [his] PTRA RailConnect credentials to log into RailConnect on Cedar's behalf, at Cedar's direction, or in

connection with [his] work for Cedar.” *Id.* ¶ 8. Defendants admit that Grace Cobbinah is a current Cedar employee and previously worked at Wabtec. Defendants deny that Grace Cobbinah accessed RMI’s TMS on behalf of or at the direction of Cedar or Defendants, or used the User ID “Gray, Gray, Gray.” Defendants affirmatively allege that the User ID “Gray, Gray, Gray” is used by a company called Gray, Gray & Gray that provides auditing services to Pan Am railroad, a RMI customer. To the extent not expressly admitted, deny.

*Defendants’ Improper Use of RMI’s Data to Compete with RMI*

41. Defendants used the Data they stole from RMI through unauthorized access to TMS and/or the RailConnect FTP Site to unfairly compete with and disparage RMI. One example of Data in TMS that provide Defendants a significant competitive advantage is the “car hire” data that RMI creates from several raw data sources. Car hire is the rental amount that railroads pay to equipment owners. This is valuable trade secret Data that Cedar could have used to help rail operators drive efficiencies by prioritizing the return of higher-priced equipment over lower-cost items and to gain other competitive advantages.

**ANSWER: Defendants deny that they stole data via unauthorized access to TMS or the RailConnect FTP Site and further deny that they have competed unfairly with or disparaged RMI. Defendants affirmatively allege that the information contained in the snapshot data feeds was not trade secret information and could not give Defendants any competitive advantage over RMI because the feeds primarily consisted of standard EDI fields that every railroad uses to track railcar inventory. Furthermore, Defendants affirmatively allege that the information contained in the snapshot data feeds was not trade secret information in part because it was owned by individual railroad customers, and not owned by RMI, as reflected in the terms of RMI’s customer contracts for its RailConnect TMS services. Defendants deny that they used or accessed any “car hire” data described in this paragraph, which in any event is likely publicly-available rate information from CHARM, an industry-standard rate manual published by Railinc. Defendants also allege that, to the extent any “car hire” data was**

1 included in the snapshot data feeds, such data would be useless without the associated  
 2 business logic and LCS events, which Defendants deny were contained in the snapshot data  
 3 feeds.

4 42. Cedar's main marketing tool to solicit RMI's customers is a software  
 5 demonstration that compares its transportation management system to TMS. On information  
 6 and belief, while attempting to compete with RMI, Cedar including (but not limited to) McCrory  
 7 while acting as a consultant on behalf of Cedar, relied on access to TMS and/or the RailConnect  
 8 FTP Site and Data taken from RMI to give Cedar a major competitive advantage in the  
 9 demonstrations.

10 **ANSWER:** Defendants admit only that Cedar conducts demonstrations of its  
 11 transportation management system, ARMS, for customers. Defendants deny that Cedar, or  
 12 any of its employees, or its consultant, David McCrory, ever used any data taken from RMI or  
 13 relied on access to RailConnect TMS and/or the RailConnect FTP Site during any of Cedar's  
 14 ARMS demonstrations or to give Cedar a competitive advantage during such demonstrations.  
 15 See ECF No. 95-1 ¶¶ 7–11. Furthermore, Defendants affirmatively allege that the information  
 16 contained in the snapshot data feeds was not trade secret information and could not give  
 17 Defendants any competitive advantage over RMI.

18 43. RMI has lost at least 15 TMS customer accounts because of Cedar's unlawful and  
 19 dishonest conduct, resulting in multimillion-dollar losses to RMI.

20 **ANSWER:** Defendants lack knowledge regarding the allegations in this paragraph and  
 21 therefore are unable to admit or deny. To the extent a response is required, deny.

## 22 FIRST CAUSE OF ACTION

### 23 Violation of Computer Fraud and Abuse Act (18 U.S.C. § 1030) 24 (Against All Defendants)

24 44. RMI re-alleges and incorporates by reference paragraphs 1 through 43 above.

25 **ANSWER:** This paragraph consists of statements to which no response is required. To  
 26 the extent a response is required, deny.  
 27

45. The servers that store Data from TMS and RailConnect FTP Site are “protected computer[s]” within the meaning of 18 U.S.C. § 1030(e) as RMI and its customers use the servers in affecting domestic or foreign commerce or communication.

**ANSWER: This paragraph consists of legal conclusions to which no response is required. To the extent a response is required, deny.**

46. On information and belief, Cedar, at the direction of Ponticello, Vilhena, and Chen, and each in violation of 18 U.S.C. § 1030(a), intentionally accessed TMS and/or the RailConnect FTP Site without authorization, or alternatively, exceeded any authorized access. As described above, in or around November 2020, RMI discovered highly unusual and harmful activity on the RailConnect FTP Site. RMI promptly launched an investigation into the activity and identified the IP addresses connected to the unusual activity. RMI learned that AWS owned those IP addresses, so RMI sought and received expedited discovery from AWS to obtain information about the persons assigned the IP addresses in question.

**ANSWER: Defendants deny they violated 18 U.S.C. § 1030(a) or intentionally accessed TMS and/or the RailConnect FTP Site without authorization or exceeded any authorized access. Defendants deny that Cedar’s access of the RailConnect FTP Site was harmful. Defendants lack knowledge regarding the remaining allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

47. AWS’s subpoena response conclusively demonstrated that the IP addresses for the devices used to access RailConnect FTP Site without authorization, or alternatively in excess of any authorized access, were assigned to Cedar, registered to Vilhena, and billed to Ponticello.

**ANSWER: Defendants only admit that Cedar has accounts with AWS that are registered to Mr. Vilhena and that the billing contact for Cedar’s AWS accounts is Mr. Ponticello. Defendants deny that Cedar accessed the RailConnect FTP Site without authorization or exceeded its authorized access. Defendants deny the remaining allegations in this paragraph.**

48. Cedar has since admitted that it accessed and uploaded Data from the RailConnect FTP Site, and continued to do so until November 2020, even after Wabtec asked Cedar to “immediately destroy[]” any “Wabtec confidential and proprietary data ... whether in physical or electronic form.” Cedar further admitted that Chen increased the pull frequency for Data via the RailConnect FTP Site in November 2020.

**ANSWER: Defendants admit only that Cedar accessed and uploaded Data from the RailConnect FTP Site until November 2020. Defendants deny that Mr. Chen increased the pull frequency for Data via the RailConnect FTP Site in November 2020. Defendants affirmatively allege that Mr. Chen changed the pull frequency of the snapshot data feeds on December 10, 2019. Defendants affirmatively allege that the information contained in the snapshot data feeds was owned by individual railroad customers, and not owned by RMI, as reflected in the terms of RMI’s customer contracts for its RailConnect TMS services. See Ex. A at ¶ 6(b), Exs. B – D at ¶ 7(b). Defendants further affirmatively allege that the snapshot data feeds did not contain any RMI confidential or proprietary data. Defendants deny that Cedar’s access to snapshot data feeds for certain railroads was unauthorized or exceeded the scope of authorization, and affirmatively allege that RMI not only knew that Cedar was accessing such feeds, but authorized Cedar’s access. Moreover, Defendants allege that Wabtec’s March 2020 letter did not revoke Cedar’s authorization to access the snapshot data feeds for the railroad customers who had been using Cedar’s product, Optiswitch. To the extent not expressly admitted, deny.**

49. Cedar and/or the other Defendants also accessed TMS without authorization, or alternatively, in excess of any authorized access.

**ANSWER: Deny.**

50. To be sure, Cedar posted a graphic to its website containing a confidential TMS user identification (“RMIJET”) that it could have only obtained from the system. Furthermore, RMI learned that Cobbinah and McCrory accessed TMS without authorization as recently as

March and June 2022, respectively. On information and belief, Cobbinah and McCrory were both acting at the direction and under the supervision of Cedar.

**ANSWER: Defendants admit only that Cedar copied the graphic from a publicly available image that was posted on RMI's support website, which included the user identification "RMIJET." Defendants deny that Mr. McCrory accessed TMS without authorization, or that he accessed TMS on behalf of, at the direction of, or under the supervision of Cedar. See ECF No. 95-1. Defendants deny that Ms. Cobbinah accessed TMS without authorization, or that she accessed TMS on behalf of, at the direction of, or under the supervision of Cedar. To the extent not expressly admitted, deny.**

51. Defendants' actions were intentional. Indeed, Cedar knew it was barred from accessing the Data from TMS and/or the RailConnect FTP Site without RMI's permission because Wabtec raised concerns to Ponticello and Vilhena about Cedar's "potential misuse of [RMI's] confidential and proprietary data" and demanded that Cedar immediately destroy "any such data" in its possession. Also, Defendants ignored the conspicuous notice on TMS that advises those entering the system that "[a]ccess or use of this system is strictly limited to persons having express authorization from RMI."

**ANSWER: Deny.**

52. Defendants' actions caused RMI damage during a one-year period aggregating at least \$5,000.00. Indeed, in the wake of Defendants' unauthorized access to TMS, RMI has suffered multimillion-dollar business losses, as well as losses and costs associated with the unusual and harmful spike in activity on TMS caused by Defendants in November 2020.

**ANSWER: Deny.**

## **SECOND CAUSE OF ACTION**

### **Violation of Stored Communications Act (18 U.S.C. § 2701) (Against All Defendants)**

53. RMI re-alleges and incorporates by reference paragraphs 1 through 52 above.

**ANSWER: This paragraph consists of statements to which no response is required. To the extent a response is required, deny.**

54. TMS and the RailConnect FTP Site are “electronic communication services” within the meaning of 18 U.S.C. § 2701(a) because, among other reasons, they provide users the ability to send or receive Data in interstate commerce.

**ANSWER: This paragraph consists of legal conclusions to which no response is required. To the extent a response is required, deny.**

55. As explained above, *supra* at 46, Cedar, acting, on information and belief, at the direction of Ponticello, Vilhena, and Chen, and each in violation of 18 U.S.C. § 2701, knowingly or intentionally accessed TMS and the RailConnect FTP Site without authorization, or alternatively, exceeded authorized access.

**ANSWER: Deny.**

56. RMI’s forensic examination after it detected the suspicious activity in November 2020 revealed that Defendants used their unauthorized access to the RailConnect FTP Site to obtain Data while it was contained in electronic storage. And Defendants did the same with respect to TMS.

**ANSWER: Deny.**

57. As described above, *supra* at 47, RMI traced the unauthorized access to Defendants. Cedar’s website further shows that Defendants accessed TMS without authorization, or alternatively, exceeded authorized access, as it displays a graphic containing confidential information. In any event, Cedar has now confirmed that it accessed and uploaded Data from the RailConnect FTP Site through November 2020, even after Wabtec asked Cedar to “immediately destroy[]” any “Wabtec confidential and proprietary data ... whether in physical or electronic form.” Cedar further admitted that Chen increased the pull frequency for Data Cedar was downloading from the RailConnect FTP Site in November 2020.



**ANSWER:** Defendants admit only that Cedar copied a graphic from a publicly available image that was posted on RMI's support website, which included the user identification "RMIJET." Defendants affirmatively allege that the snapshot data feeds are hosted on an external FTP server that is separate from RMI's TMS computer system. See Murray Decl. ¶¶ 9, 12. Defendants admit that Cedar accessed snapshot data files pertaining to certain railroads held on an external FTP server, with RMI's and the railroads' authorization. Defendants deny that Cedar's access to snapshot data feeds for certain railroads was unauthorized or exceeded the scope of authorization, and affirmatively allege that RMI not only knew that Cedar was accessing such feeds, but authorized Cedar's access. Defendants affirmatively allege that the information contained in the snapshot data feeds was owned by individual railroad customers, and not owned by RMI, as reflected in the terms of RMI's customer contracts for its RailConnect TMS services. See Ex. A at ¶ 6(b), Exs. B – D at ¶ 7(b). Defendants further affirmatively allege that the snapshot data feeds did not contain any RMI confidential or proprietary data. Defendants deny that Mr. Chen increased the pull frequency for Data Cedar was downloading from the RailConnect FTP Site in November 2020. Instead, Defendants affirmatively allege that Mr. Chen changed the pull frequency of the snapshot data feeds on December 10, 2019. To the extent not expressly admitted, deny.

58. RMI has suffered actual harm due to Defendants' unlawful and dishonest conduct, including multimillion dollars in lost business, as well as losses and costs associated with the unusual and harmful spike in activity on TMS caused by Defendants in November 2020.

**ANSWER:** Deny.

**THIRD CAUSE OF ACTION  
Trade Secret Misappropriation Under Defend Trade Secrets Act (18 U.S.C. § 1836)  
(Against All Defendants)**

59. RMI re-alleges and incorporates by reference paragraphs 1 through 58 above.

**ANSWER:** This paragraph consists of statements to which no response is required. To the extent a response is required, deny.

60. RMI has developed and owns confidential, proprietary, and trade secret information contained in TMS and the RailConnect FTP Site, including financial, business, scientific, technical, economic, or engineering information such as the Data, and the login credentials that provide access to the Data. This information relates to products or services used in, or intended for use in interstate commerce, as RMI's rail customers across the country use TMS and the RailConnect FTP Site.

**ANSWER: Defendants affirmatively allege that the RailConnect FTP Site is separate from RMI's TMS system. See Murray Decl. ¶¶ 9, 12. Defendants affirmatively allege that the login credentials used to access RailConnect TMS are distinct from the login credentials used to access the RailConnect FTP Site. *Id.* Defendants deny that all of the information contained in TMS is confidential, proprietary, or trade secret information. Defendants affirmatively allege that the snapshot data feeds on the RailConnect FTP Site did not contain any RMI confidential, proprietary, or trade secret data in part because the information contained in the snapshot data feeds was owned by individual railroad customers, and not owned by RMI, as reflected in the terms of RMI's customer contracts for its RailConnect TMS services. See Ex. A at ¶ 6(b), Exs. B – D at ¶ 7(b). Defendants lack knowledge regarding the remaining allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

61. The confidential, proprietary, and trade secret information in TMS and the RailConnect FTP Site is valuable as it is unknown to others. RMI has implemented access restrictions to protect the information, including requiring users to register on TMS, providing unique login credentials for each customer, and notifying anyone entering TMS that "[a]ccess or use of this system is strictly limited to persons having express authorization from RMI." RMI has expended significant resources and effort to develop TMS, the confidential, proprietary, and trade secret information contained in the system, and the access control systems that protect TMS and the RailConnect FTP Site from unauthorized intrusion.

**ANSWER:** Defendants affirmatively allege that the RailConnect FTP Site is separate from RMI's TMS system. See Murray Decl. ¶¶ 9, 12. Defendants affirmatively allege that the login credentials used to access RailConnect TMS are distinct from the login credentials used to access the RailConnect FTP Site. *Id.* Defendants deny that all of the information contained in TMS is confidential, proprietary, or trade secret information. Defendants affirmatively allege that the snapshot data feeds on the RailConnect FTP Site did not contain any RMI confidential, proprietary, or trade secret data in part because the information contained in the snapshot data feeds was owned by individual railroad customers, and not owned by RMI, as reflected in the terms of RMI's customer contracts for its RailConnect TMS services. See Ex. A at ¶ 6(b), Exs. B – D at ¶ 7(b). Defendants deny that the information in the RailConnect FTP Site is valuable because it is unknown to others because the snapshot data feeds contain inventory data that is shared among different railroads and third parties in order to track railcar shipments. Defendants deny that Cedar's access to snapshot data feeds for certain railroads was unauthorized or exceeded the scope of authorization, and affirmatively allege that RMI not only knew that Cedar was accessing such feeds, but authorized Cedar's access. Defendants lack knowledge regarding the remaining allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.

62. The confidential, proprietary, and trade secret information included in TMS and the RailConnect FTP Site derives independent economic value from not being generally known to and not being readily ascertainable through proper means by another person who could obtain economic value from disclosing or using the information. The information at hand has tremendous value to Defendants in their effort to solicit RMI's customers and develop a client base.

**ANSWER:** Defendants deny that all of the information contained in TMS is confidential, proprietary or trade secret information. Defendants affirmatively allege that the snapshot data feeds did not contain any RMI confidential, proprietary, or trade secret

1 data in part because the information contained in the snapshot data feeds was owned by  
 2 individual railroad customers, and not owned by RMI, as reflected in the terms of RMI's  
 3 customer contracts for its RailConnect TMS services. See Ex. A at ¶ 6(b), Exs. B – D at ¶ 7(b).  
 4 Defendants deny that the information in the RailConnect FTP Site derives independent  
 5 economic value from not being generally known to and not being readily ascertainable  
 6 through proper means by another person who could obtain economic value from disclosing  
 7 or using the information because the snapshot data feeds contain inventory data that is  
 8 shared among different railroads and third parties in order to track railcar shipments.  
 9 Defendants deny that Cedar, or any of its employees or consultants, ever used any data taken  
 10 from RMI, RailConnect TMS and/or the RailConnect FTP Site to solicit RMI's customers or  
 11 develop Cedar's client base. Defendants deny the remaining allegations in this paragraph.

12 63. All of RMI's rail customers that use TMS and the RailConnect FTP Site are  
 13 contractually obligated to maintain the secrecy of their login credentials and other confidential  
 14 and trade secret information that is contained in or provides access to the system. Also, RMI's  
 15 employees are required to keep the company's proprietary and trade secret information  
 16 confidential.

17 **ANSWER: Defendants lack knowledge regarding the allegations in this paragraph and**  
 18 **therefore are unable to admit or deny. To the extent a response is required, deny.**

19 64. In violation of RMI's rights under the Defend Trade Secrets Act, 18 U.S.C. § 1836  
 20 et seq., Cedar, acting, on information and belief, at the direction of Ponticello, Vilhena, and  
 21 Chen, misappropriated the confidential, proprietary, and trade secret information contained in  
 22 TMS and the RailConnect FTP Site as described above.

23 **ANSWER: Deny.**

24 65. Defendants misappropriated the confidential, proprietary, and trade secret  
 25 information contained in TMS and the RailConnect FTP Site knowing or having reason to know  
 26 that it was acquired by improper means. Also, when they obtained and used the information,  
 27

Defendants knew or had reason to know their knowledge of RMI's trade secrets was derived from or through a person who had utilized improper means to acquire it, acquired it under circumstances giving rise to a duty to maintain its secrecy or limit its use or derived it from or through a person who owed a duty to RMI to maintain its secrecy or limit its use. That Defendants continued to misappropriate the information after Ponticello claimed Cedar did not have "access to any of [RMI's] confidential and proprietary data" shows that Defendants' acts are willful and rise to the level of maliciousness appropriate for exemplary and punitive damages, including attorney's fees.

**ANSWER: Deny.**

66. As a result of Defendants' misappropriation of the confidential, proprietary, and trade secret information included in TMS and the RailConnect FTP Site, RMI has suffered actual damages in an amount to be proven at trial. At a minimum, Defendants have gained an improper competitive advantage over RMI because they have accessed and used RMI's proprietary information to solicit RMI's customers, all without having invested the time, funds, and resources to develop the information.

**ANSWER: Deny.**

67. Defendants' ongoing and continuing use of RMI's trade secrets and proprietary and confidential information has caused, and will cause, RMI repeated and irreparable injury. RMI's remedy at law is not, by itself, adequate to compensate for the injuries already inflicted and further threatened. RMI is also entitled to damages for unjust enrichment resulting from Defendants' misappropriation of the trade secrets that are not addressed in computing damages for actual loss. Defendants have unjustly enriched themselves from RMI's information because they have not invested anything in acquiring or curating the information.

**ANSWER: Deny.**

## FOURTH CAUSE OF ACTION

Trade Secret Misappropriation under Wash. Rev. Stat. § 19.108.010  
(Against All Defendants)

68. RMI re-alleges and incorporates by reference paragraphs 1 through 67 above.

**ANSWER: This paragraph consists of statements to which no response is required. To the extent a response is required, deny.**

69. As explained above, *supra* at 61-62, RMI has developed and owns confidential, proprietary, and trade secret information, including the Data, and the login credentials that provide access to the Data.

**ANSWER: Defendants affirmatively allege that Cedar obtained login credentials to access the RailConnect FTP Site for certain railroads from RMI and/or the railroads. Defendants affirmatively allege that the snapshot data feeds did not contain any RMI confidential, proprietary, or trade secret data in part because the information contained in the snapshot data feeds was owned by individual railroad customers, and not owned by RMI, as reflected in the terms of RMI's customer contracts for its RailConnect TMS services. See Ex. A at ¶ 6(b), Exs. B – D at ¶ 7(b). Defendants lack knowledge regarding the remaining allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

70. As explained above, *supra* at 63, RMI has taken reasonable measures to keep such information secret. Also, RMI's trade secret information derives independent economic value by not being generally known to and not being readily ascertainable through proper means by another person who could obtain economic value from disclosing or using the information.

**ANSWER: Defendants lack knowledge regarding the allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**

71. In violation of Plaintiff's rights under the Washington Uniform Trade Secrets Act, Wash. Rev. Code § 19.108.010 et seq., Cedar, acting at the direction of Ponticello, Vilhena,

Chen, misappropriated the confidential, proprietary, and trade secret information described above. *Supra* 64-65.

**ANSWER: Deny.**

72. Defendants' unlawful conduct involved the misappropriation of RMI's trade secret information knowing or having reason to know that it was acquired by improper means. Furthermore, at the time they obtained and used RMI's trade secret information, Defendants knew or had reason to know their knowledge of RMI's trade secrets was derived from or through a person who had utilized improper means to acquire it, acquired it under circumstances giving rise to a duty to maintain its secrecy or limit its use or derived it from or through a person who owed a duty to RMI to maintain its secrecy or limit its use.

**ANSWER: Deny.**

73. Defendants' conduct was intentional, knowing, willful, malicious, fraudulent, and oppressive. As a direct and proximate result of their conduct, RMI has suffered and will continue to suffer irreparable financial loss, loss of goodwill, and irreparable loss of the confidentiality of its proprietary and trade secret information, for which there is no adequate remedy at law.

**ANSWER: Deny.**

74. RMI has suffered substantial damages as a direct and proximate result of Defendants' conduct in an amount to be proven at trial. Defendants have also been unjustly enriched by their misappropriation of RMI's trade secrets in an amount to be proven at trial.

**ANSWER: Deny.**

#### **FIFTH CAUSE OF ACTION**

#### **Unfair Competition under Wash. Rev. Stat. § 19.86.020 (Against All Defendants)**

75. RMI re-alleges and incorporates by reference paragraphs 1 through 74 above.

**ANSWER: This paragraph consists of statements to which no response is required. To the extent a response is required, deny.**

76. Defendants' unlawful acts constitute unfair competition under Wash. Rev. Stat. § 19.86.020 because Cedar, acting at the direction of Ponticello and Vilhena, engaged in unfair methods of competition and deceptive acts in the conduct of trade or commerce.

**ANSWER: Deny.**

77. Defendants' unfair methods of competition include, but are not limited to, accessing TMS and the RailConnect FTP Site without RMI's consent; improperly downloading confidential Data; and improperly using the Data to compete against and disparage RMI. Defendants also used access to TMS and the RailConnect FTP Site and Data they stole from the platforms to perform demonstrations for RMI's customers.

**ANSWER: Deny.**

78. The public is interested in the subject matter of this dispute because, among other reasons, Defendants committed the acts alleged here in the course of their business in Washington.

**ANSWER: Deny.**

79. RMI was injured in its business or property by Defendants' violation of Wash. Rev. Stat. § 19.86.020, including suffering multimillion-dollar losses in business.

**ANSWER: Deny.**

#### SIXTH CAUSE OF ACTION

#### Tortious Interference with Business Relationships (Against All Defendants)

80. RMI re-alleges and incorporates by reference paragraphs 1 through 79 above.

**ANSWER: This paragraph consists of statements to which no response is required. To the extent a response is required, deny.**

81. RMI had a legitimate business relationship with its customers and reasonable business expectations derived from those relationships.

**ANSWER: Defendants lack knowledge regarding the allegations in this paragraph and therefore are unable to admit or deny. To the extent a response is required, deny.**



82. On information and belief, Defendants knew about RMI's business relationships because, among other things, Cedar hired numerous former Wabtec employees familiar with RMI's customer base for TMS. On information and belief, certain of these employees took confidential information when leaving Wabtec, including information showing when RMI's customer's contracts ended.

**ANSWER: Defendants admit only that Cedar hired certain individuals who approached Cedar regarding job opportunities after having worked for RMI and General Electric Company ("GE"), which merged with Wabtec in 2019. Defendants deny the remaining allegations in this paragraph.**

83. On information and belief, Cedar, acting at the direction of Ponticello, Vilhena, and Chen, intentionally interfered with numerous RMI business relationships for an improper purpose or using improper means, thereby causing termination of those relationships.

**ANSWER: Deny.**

84. As described above, Defendants improperly used the Data to compete against and disparage RMI. Again, on information and belief, Defendants used access to TMS and the RailConnect FTP Site and Data they stole to perform demonstrations in an attempt to solicit RMI's customers.

**ANSWER: Deny.**

85. Defendants' wrongful conduct has significantly harmed RMI. To date, RMI has lost at least 15 customer accounts, representing multimillion-dollar losses in business.

**ANSWER: Deny.**

## SEVENTH CAUSE OF ACTION Trespass to Chattels (Against All Defendants)

86. RMI re-alleges and incorporates by reference paragraphs 1 through 85 above.

**ANSWER: This paragraph consists of statements to which no response is required. To the extent a response is required, deny.**

87. As described above, Cedar, acting at the direction of Ponticello, Vilhena, and Chen, intentionally accessed RMI's personal property (*i.e.*, TMS and the RailConnect FTP Site) without RMI's authorization and improperly downloaded confidential and proprietary Data in a manner that deprived RMI of its possession and use of the TMS servers.

**ANSWER: Deny.**

88. In particular, when Cedar and/or Chen changed the pull frequency from Data downloaded from RailConnect FTP Site in November 2020, RMI experienced an unusual and harmful spike in activity on the TMS servers, which temporarily deprived RMI of its (and its customers) use of it, and also required significant and costly remediation efforts.

**ANSWER: Deny.**

**EIGHTH CAUSE OF ACTION  
Negligence  
(Against Cedar and Chen)**

89. RMI re-alleges and incorporates by reference paragraphs 1 through 88 above.

**ANSWER: This paragraph consists of statements to which no response is required. To the extent a response is required, deny.**

90. Cedar and Chen, acting through Cedar, owed a duty of reasonable care to RMI when downloading Data from TMS and/or the RailConnect FTP Site.

**ANSWER: Deny.**

91. They breached that duty of reasonable care by increasing the pull frequency on Data downloaded from the RailConnect FTP Site in a manner caused significant and costly harm to RMI's TMS servers and required RMI to engage in significant and costly remediation efforts.

**ANSWER: Deny.**

92. Cedar and/or Chen's breach of their duty of reasonable care resulted in and was the proximate cause of RMI's injury—namely, losses and costs associated with the unusual and harmful spike in activity on the RailConnect FTP Site.

**ANSWER: Deny.**

**PRAYER FOR RELIEF**

WHEREFORE, RMI prays for:

93. Compensatory damages for losses sustained due to Defendants' improper conduct;

94. Exemplary and punitive damages per 18 U.S.C. §§ 1836(b)(3)(C), 2707(c), or any other cause of action stated here that permits the recovery of such damages.

95. Preliminary and permanent relief enjoining Defendants from accessing, using, disclosing, or benefitting directly or indirectly from TMS and the Data and from soliciting, attempting to solicit, or doing business with any of RMI's rail customers;

96. An order that directs Defendants to (a) return to all RMI confidential information in its possession, (b) disclose all persons or entities to which it disclosed confidential information and who disclosed it, and (c) destroy all Data and other information obtained from TMS;

97. A judgment that Defendants violated the Computer Fraud and Abuse Act and Stored Communications Act, and that it unfairly competed with RMI, tortiously interfered with RMI's business relationships, and was unjustly enriched at RMI's expense;

98. Reasonable attorneys' fees and costs under 18 U.S.C. §§ 1836(b)(3)(D), 2707(b)(3), or any other cause of action stated here that permits the recovery of these expenses.

99. Pre- and post-judgment interest; and

100. Such other and further relief as the Court deems just and proper.

**ANSWER: Defendants deny that Plaintiff is entitled to any of the relief sought in the Second Amended Complaint.**

**JURY DEMAND**

101. RMI demands a jury trial in this action.

**AFFIRMATIVE DEFENSES**

Without assuming any burden of pleading or proof that would otherwise rest on Plaintiff, and reserving the right to amend this Answer to assert any additional defenses when, and if, in the course of its investigation, discovery, preparation for trial, or otherwise, it becomes appropriate to assert such defenses, Defendants allege the following affirmative defenses.

**FIRST AFFIRMATIVE DEFENSE – FAILURE TO STATE A CLAIM**

Plaintiff fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE – UNJUST ENRICHMENT**

Defendants allege that granting Plaintiff's demand in the Second Amended Complaint would result in unjust enrichment.

**THIRD AFFIRMATIVE DEFENSE – UNCLEAN HANDS**

Plaintiff's claims are barred under the doctrine of unclean hands because Plaintiff has engaged in the same course of unlawful conduct with respect to unfair methods of competition and tortious interference with business expectancies of which it accuses Defendants.

**FOURTH AFFIRMATIVE DEFENSE – EQUITABLE ESTOPPEL**

Plaintiff's claims are barred under the doctrine of equitable estoppel because Defendants relied on Plaintiff's authorizations to access the RailConnect FTP Site and download the snapshot data feeds for certain railroads via the unique login credentials provided to Defendants by Plaintiff with the permission of the railroad customers.

**FIFTH AFFIRMATIVE DEFENSE – ABUSE OF PROCESS**

Plaintiff's claims are an abuse of process, being pursued for an improper purpose which is to stifle competition by disparaging Cedar and Defendants and driving Cedar out of business.

**SIXTH AFFIRMATIVE DEFENSE – GOOD FAITH**

Defendants acted at all times in good faith and did not directly or indirectly induce any acts alleged to constitute of violation of law or give rise to a claim in this action.

**SEVENTH AFFIRMATIVE DEFENSE – CONSENT**

Plaintiff's claims are barred as Plaintiff authorized and consented to Defendants' access to the RailConnect FTP Site by providing Defendants with unique login credentials with the permission of the railroad customers.

**EIGHTH AFFIRMATIVE DEFENSE – NO DUTY**

Defendants owe no duty of care to Plaintiff.

**NINTH AFFIRMATIVE DEFENSE – NO BREACH OF DUTY**

Even if Defendants owed a duty of care to Plaintiff, which Defendants deny, Defendants did not breach that duty.

**TENTH AFFIRMATIVE DEFENSE – CAUSATION**

To the extent Plaintiff has suffered the damages alleged in the Second Amended Complaint, which Defendants deny, such damages were not caused by Defendants.

**ELEVENTH AFFIRMATIVE DEFENSE – COMPARATIVE NEGLIGENCE**

Plaintiff's claims are barred due to its contributory and/or comparative negligence.

**TWELFTH AFFIRMATIVE DEFENSE – FAILURE TO MITIGATE DAMAGES**

Plaintiff failed to mitigate any damages that it has allegedly suffered.

**THIRTEENTH AFFIRMATIVE DEFENSE – SPECULATIVE DAMAGES**

Plaintiff's damages are speculative and cannot be reasonably calculated.

**RESERVATION OF RIGHTS**

Defendants reserve the right to assert additional affirmative defenses as they become available.

**DEMAND FOR JURY TRIAL**

Defendants hereby demand a jury trial on all matters so triable as of right.

**COUNTERCLAIM AND THIRD-PARTY COMPLAINT**

Defendant and Counterclaim Plaintiff Cedar AI, Inc. (“Cedar”) brings claims against Plaintiff and Counterclaim Defendant Railcar Management, LLC (“RMI”), and Third-Party Defendant Wabtec Corporation (“Wabtec”) as follows:

**I. PARTIES**

1. Cedar is a technology startup company dedicated to providing the rail industry with state-of-the-art yard operating, planning, and management software. Cedar is incorporated under the laws of Delaware and has its principal place of business in Seattle, Washington.

2. On information and belief, RMI is a limited liability company formed under the laws of the state of Georgia. Its principal place of business is located in Atlanta, Georgia. RMI was a subsidiary of GE from January 2012 to February 2019, and became a subsidiary of Wabtec after GE merged with Wabtec in February 2019.

3. Wabtec is a global provider of equipment, components, software, services, and systems for the transportation industry. Wabtec is incorporated under the laws of Delaware and has a principal place of business in Pittsburgh, Pennsylvania. Wabtec acquired RMI via its merger with GE Transportation (“GE”) in February 2019 and GE is now a division of Wabtec.

4. RMI as defined herein includes GE and Wabtec during the relevant time periods of ownership by those respective entities.

5. On information and belief, Wabtec operates as RMI’s and GE’s alter ego and there is such a unity of ownership and interest between RMI, GE, and Wabtec that the separateness of these corporate entities, if any, has ceased to exist. For example, there is unity of ownership because Wabtec owns both RMI and GE. Neither GE nor RMI appear to have separate employees and, on information and belief, RMI’s main asset, RailConnect, has been transferred to Wabtec. RMI, GE, and Wabtec have disregarded any distinction between the corporate entities by allowing Wabtec to act on RMI’s and GE’s behalf throughout the relevant

time frame during the respective periods of ownership, including in business interactions with Cedar.

## II. JURISDICTION AND VENUE

6. Counterclaim and Third-Party Defendants RMI and Wabtec are within the jurisdiction of this Court. Cedar's counter- and third-party- claims arise under Section 2 of the Sherman Act (15 U.S.C. § 2), Section 4 of the Clayton Act (15 U.S.C. § 15(a)), and Section 16 of the Clayton Act (15 U.S.C. § 26). Cedar seeks damages for its injuries resulting from RMI and Wabtec's tortious and anti-competitive conduct. Cedar also seeks an injunction to prohibit RMI and Wabtec (including GE, now a division of Wabtec) from continuing their unlawful conduct. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1332 (in that there is diversity of citizenship between the parties and the amount placed in controversy by each of the claims for relief herein exceeds \$75,000, exclusive of interests, costs and attorneys' fees), 28 U.S.C. § 1337(a) (antitrust), and 15 U.S.C. § 15 (antitrust). This Court also has jurisdiction over Cedar's state law claims pursuant to 28 U.S.C. § 1367 because such state law claims are related to, and form part of, the same case or controversy.

7. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial portion of the acts alleged herein took place in this district and RMI and Wabtec carry out interstate trade and commerce in this district. Venue also is appropriate in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22 (nationwide venue for antitrust matters). Further, venue is proper in this district because RMI sued Cedar in this judicial district on the basis of RMI's Transportation Management System ("TMS"), which is the subject of Cedar's Counterclaim and Third-Party Complaint.

## III. NATURE OF THE ACTION

8. Cedar was founded in 2017 to develop Optiswitch, an innovative yard optimization tool for shortline railroads that leverages artificial intelligence.

9. Optiswitch relies on inventory data from Transportation Management Systems (“TMSs”) in order to operate. A TMS is a railcar inventory management system used by railroads to automate their daily operations.

10. Shortline railroads are Class II and Class III railroads with reporting marks, as defined by the Surface Transportation Board of the United States (“STB”). Shortline railroads are distinct from Class I railroads, such as BNSF Railway Company and Norfolk Southern, as well as from third-party switchers, which move railcars within a rail yard, but not longer distances.

11. RMI is the dominant TMS provider for shortline railroads in the United States. However, over the course of approximately the last 15 years, RMI has allowed its TMS product, RailConnect, and its customer service to languish.

12. Rather than innovate or improve its services, RMI has engaged in a campaign of anticompetitive conduct in order to maintain its dominant position and stifle competition from the only two major vendors who have attempted to compete with it. In 2016, RMI acquired its only meaningful existing competitor, ShipXpress, and shortly thereafter terminated ShipXpress’ TMS product, Command. When Cedar launched a competing, innovative, cost-effective TMS product in 2020, RMI initiated an aggressive campaign to lock up shortline railroad customers in new multi-year contracts, thereby foreclosing them from switching to Cedar’s new product. RMI purposefully timed its actions to sabotage Cedar’s launch of its competing product and to put Cedar out of business. RMI has also tried on numerous occasions to acquire Cedar, just as it did ShipXpress. RMI has now filed a baseless lawsuit against Cedar with the intent of interfering with Cedar’s business and eliminating RMI’s only real competitor in the market for TMS products for shortline railroads.

13. Cedar’s Counterclaim and Third-Party Complaint arises from RMI and Wabtec’s pattern of unfair, unlawful, and anticompetitive actions against its competitors in the market for TMS products for shortline railroads, including but not limited to Cedar. Upon information and belief, and as described below, RMI and Wabtec’s intentional conduct has severely harmed



competition, and will continue to cause injury to current and potential future competitors and customers by substantially foreclosing competition in the market for TMS products for shortline railroads.

#### IV. FACTUAL ALLEGATIONS

##### A. TMS Products Are the Backbone of a Shortline Railroad's Business and RMI Is the Dominant TMS Provider for Shortline Railroads Despite Antiquated Technology, Poor Customer Service, and High Prices

14. A TMS is a railcar inventory management system used by railroads to automate their daily operations. A TMS tracks rail car events, movements, and rail tracks; calculates revenue owed to the railroad; handles invoicing; and provides business intelligence. Shortline railroads send and receive all of their electronic data interchange ("EDI") messages to and from other railroads via their TMS. Without the ability to send and receive EDI, a shortline railroad has no way of knowing which trains are coming and going from its rail yards or what to do with the railcars once they arrive. Thus, a shortline railroad is unable to function without a TMS.<sup>2</sup>

15. RMI is the dominant TMS provider for shortline railroads in the United States. RMI introduced the first major shortline TMS, RailConnect, in 1992.

16. On information and belief, RMI has over an 80% share of the market for TMS products for shortline railroads in the United States (the "Shortline Railroad TMS Market"). In March 2018, Jen Schopfer, Vice President of GE's Transport Logistics division (RMI's parent company until February 2019), described RMI's customer base as "virtually all" shortline railroads in the United States.<sup>3</sup>

17. RMI's current parent company, Wabtec, is a global corporation with over 100 subsidiaries, 27, 000 employees in 50 countries, net sales of \$8.2 billion in 2019, and a market capitalization value of over \$16 billion.<sup>4</sup>

<sup>2</sup> See **Exhibit 1** (McCrary Declaration) ¶ 30; **Exhibit 2** (Mahlandt Declaration) ¶ 3.

<sup>3</sup> Daniel Niepow, *Short Lines Band Together to Leverage Big Data*, PROGRESSIVE RAILROADING (March 15, 2018), <https://www.progressiverailroading.com/internet-digital/article/Short-lines-band-together-to-leverage-Big-Data--54114>.

<sup>4</sup> See Wabtec Corporation, Annual Report (Form 10-K) (Feb. 19, 2021), <https://ir.wabteccorp.com/static-files/45820bca-d006-48f0-b02f-6112e1ba8932>.

18. RailConnect was originally developed in 1992 using a “green screen” interface, which relies on manually entered commands, similar to MS-DOS. Over the years, RMI attempted to graft more user-friendly interfaces onto RailConnect’s 1992-vintage software without success.

19. RailConnect has become an outdated product, as RMI has failed to update its software to meet customer demands. RMI’s customers have also complained that its customer service has deteriorated over time.<sup>5</sup>

20. Customers have long wanted an alternative to RailConnect because it is outdated, difficult to use, and overpriced. In 2015, GE created a Customer Advisory Board in response to complaints from shortline railroad customers who were dissatisfied with RailConnect.<sup>6</sup> However, RMI has not delivered requested changes or updates to RailConnect under either GE or Wabtec ownership.

21. Shortline railroads measure efficiency by analyzing metrics like railcar dwell time, or the amount of time a railcar sits in the yard, and the overall number of railcars the yards are able to process. The more railcars that move through, the more revenue the yard makes.<sup>7</sup> Shortline railroads cannot maintain, much less improve, efficiency without innovative TMS technology and competent customer service.

#### **B. RMI Acquired and Eliminated its Only Meaningful Competitor in the Shortline Railroad TMS Market**

22. Before Cedar existed, RMI’s only meaningful competitor was ShipXpress, which gained a foothold in the Shortline Railroad TMS Market in the 2010s by offering a less expensive alternative TMS product called Command.<sup>8</sup> Between 2010 and 2016, ShipXpress gained approximately 100 shortline railroad customers for Command. On information and belief, Command cost roughly half as much as RMI’s RailConnect TMS product.

<sup>5</sup> See ECF No. 31-1, **Exhibit 1** (McCrory Declaration) ¶ 28; ECF No. 31-3, **Exhibit 3** (Evans Declaration) ¶¶ 5-7.

<sup>6</sup> See ECF No. 31-3, **Exhibit 3** (Evans Declaration) ¶¶ 5-6.

<sup>7</sup> See ECF No. 31-1, **Exhibit 1** (McCrory Declaration) ¶ 33.

<sup>8</sup> See ECF No. 31-3, **Exhibit 3** (Evans Declaration) ¶ 8.

23. Rather than compete with ShipXpress, RMI decided to squelch the competition by acquiring ShipXpress in 2016. After the acquisition, on information and belief, RMI raised the price of Command, and allowed the product and customer service to deteriorate.

24. After Wabtec acquired RMI, it announced in late 2019 or early 2020 that it would discontinue Command and told Command customers their only option was to switch to RMI's RailConnect.<sup>9</sup>

**C. Cedar's Founders Designed Optiswitch to Integrate with TMS Software**

25. Mario Ponticello and Daril Vilhena founded Cedar in 2017 to build Optiswitch, a yard optimization tool for shortline railroads. Optiswitch utilizes artificial intelligence to analyze the inventory in a rail yard and tell operators how to move railcars efficiently, a process that has historically been handled manually with pen and paper. Optiswitch is not a TMS, but instead an innovative complement to a TMS that can automate inventory and rail yard management.

26. Optiswitch requires up-to-the-minute inventory data to function. Optiswitch needs to know which cars are on which track, what commodities the cars contain, and where the cars are going to create an efficient switching plan for the yard. Rail yards receive inventory data from EDI messages sent by other railroads. EDI messages use standardized fields and codes to maintain data uniformity throughout the railroad industry. Once received via EDI, inventory data is stored in the railroad's TMS.

27. Optiswitch uses inventory data that has been exported from a TMS into a static source, such as a comma-separated values (CSV) file. Data exported from a TMS into CSV format is known as a "snapshot" file. However, exported inventory data becomes obsolete the moment a single rail car moves, so snapshot files have to be produced at regular intervals (e.g., every five minutes) to keep up with current inventory.

28. At a minimum, Optiswitch requires the following fields to work: station, track, sequence (order of car on the track), car initial and number, car length, gross weight, load

---

<sup>9</sup> See ECF No. 31-2, **Exhibit 2** (Mahlandt Declaration) ¶ 8.

status, STCC (commodity code), and block (block name from the car's trip plan).<sup>10</sup> These are standard fields used by all railroads in the United States and recognized by every TMS, and are intended to maintain consistency among the shortline railroads. Optiswitch also allows for additional optional fields that Class I railroads generally have, such as car priority or track distance matrices.

**D. Cedar Marketed Optiswitch with RMI's Permission and Participation**

29. Cedar was eager, and needed, to work cooperatively with RMI due to RMI's dominant share of the Shortline Railroad TMS Market. In April 2018, Cedar approached RMI about integrating Optiswitch with its TMS product, RailConnect.

30. Beginning in May 2018, RMI provided access to snapshot data feeds for 15 of Cedar's potential customers. RMI provided Cedar with unique login credentials to access snapshot data feeds for 15 railroads interested in using Optiswitch in concert with RMI's TMS, RailConnect. The login credentials provided Cedar access to an external FTP server where RailConnect automatically uploaded and stored the snapshot data files. The login credentials did not provide Cedar access to RMI's internal servers or the RailConnect TMS program. Cedar created a program that downloaded each railroad's snapshot data files from the external FTP server at regular intervals and imported the data into Optiswitch.

31. On May 4, 2018, Steve Murray, Cedar's Executive Vice President, sought "express approval" for an Optiswitch pilot project for RMI customer, Longview Junction Switch Railroad (LVSW), in an email to RMI Customer Success Manager, Larry Cantu:

[W]e would develop a prototype of [Optiswitch] for LVSW to evaluate. This process requires an interface from RailConnect of current inventory information. We have proposed using the snapshot file via ftp, as that's a common interface that other GE Customers [sic] use to feed data to external systems. I have added a line in the MOU to make sure we're very clear that we

<sup>10</sup> See ECF No. 31-4, **Exhibit 4** (Optiswitch Minimum Interface Specification).

will treat RailConnect information, all business processes, and the LVSW data as confidential.<sup>11</sup>

Mr. Cantu responded “[a]s far as we are concerned we do not see any conflict with the proposal.”<sup>12</sup>

32. Following this exchange, Mr. Murray corresponded with Andrew Parker, Senior Director of Technical Product Management at RMI, about the EDI fields needed for the snapshot file.<sup>13</sup> In a subsequent email including the customer, LVSW, Mr. Murray explained: “What we’re talking about below with Andrew is simply a data feed, basically a switch list; I don’t need or want access to TMS for that.”<sup>14</sup>

33. Cedar continued to market Optiswitch to customers throughout 2018 and 2019. Each time Cedar began working with a new railroad, RMI provided FTP login credentials either directly to Cedar or through the customer so that Cedar could access a snapshot data feed for that customer. RMI did so on each occasion without raising any concerns with Cedar.

34. For example, between December 2018 and November 2018, RMI provided Cedar with unique login credentials to access snapshot data feeds for at least the following: Grafton and Upton (“GU”) and Port Harbor Railroad (“PHRR”);<sup>15</sup> Gardendale Railroad (“GRD”);<sup>16</sup> Cedar Rapids & Iowa City Railroad (“CIC”);<sup>17</sup> Central Maine and Quebec Railway (“CMQ”);<sup>18</sup> Port Terminal Railroad Association (“PTRA”);<sup>19</sup> Texas North Western Railway (“TXNW”);<sup>20</sup> and Portland Terminal Railroad Company (“PTRC”).<sup>21</sup>

<sup>11</sup> See ECF No. 31-5, **Exhibit 5** (May 4, 2018 email RE: Cedar AI MOU with LVSW).

<sup>12</sup> See ECF No. 31-5, **Exhibit 5** (May 4, 2018 email RE: Cedar AI MOU with LVSW).

<sup>13</sup> See ECF No. 52-1 at H, **Exhibit 6** at 4 (May 27, 2018 email RE: GE-RMI Generated Data – LVSW).

<sup>14</sup> See ECF No. 52-1 at H, **Exhibit 6** at 1 (May 27, 2018 email RE: GE-RMI Generated Data – LVSW).

<sup>15</sup> See ECF No. 31-7, **Exhibit 7** (Dec. 7, 2018 email FTP for Online Snapshot); *see also* ECF No. 31-8, **Exhibit 8** (Dec. 10, 2018 email RE: FTP for Online Snapshot); and ECF No. 31-9, **Exhibit 9** (Dec. 10, 2018 email FTP for GU and PHRR).

<sup>16</sup> See ECF No. 31-10, **Exhibit 10** (Dec. 19, 2018 email RE: GRD Snapshot Feed).

<sup>17</sup> See ECF No. 31-11, **Exhibit 11** (Jan. 16, 2019 email RE: AEI FTP for CIC).

<sup>18</sup> See ECF No. 31-12, **Exhibit 12** (Jan. 16, 2019 email RE: CMQ); *see also* ECF No. 31-13, **Exhibit 13** (Jan. 29, 2019 email RE: Access).

<sup>19</sup> See ECF No. 31-14, **Exhibit 14** (Feb. 13, 2019 email RE: FTP for Snapshot for PTRC).

<sup>20</sup> See ECF No. 31-3, Evans Decl., Ex. C (Apr. 11, 2019 email RE: FTP).

<sup>21</sup> See ECF No. 31-15, **Exhibit 15** (Oct. 10, 2019 email RE: PTRC access).

35. Once activated, the snapshot data feeds were updated and downloaded by Cedar from the FTP server automatically, without requiring manual entry of login credentials each time.

36. As Cedar continued to optimize the Optiswitch product and work with its customers, it became clear that the snapshot data feeds were insufficient for high-volume rail yards because the data became stale almost immediately because it was not a real-time data feed. Customers wanted the TMS data to be sent to Optiswitch continuously, and wanted Optiswitch to be able to send data regarding inventory back to the TMS in real time.<sup>22</sup> Cedar and its customers realized that an application programming interface (“API”) between RailConnect and Optiswitch, which could exchange real-time data automatically, was necessary for Optiswitch to work as designed and as customers sought and needed.

37. On information and belief, RMI customers are prohibited from or otherwise unable to provide their TMS data to Cedar directly.

**E. RMI Abruptly Terminated Cedar’s Access to the Snapshot Feeds**

38. Although RMI authorized Cedar’s access to the snapshot data feeds it used with its Optiswitch customers, Cedar was aware that RMI could unilaterally terminate the data feeds at any time. RMI’s sudden termination of Command demonstrated its willingness to abruptly terminate for its own benefit services customers need and rely on, which heightened concerns about the possibility of similar abrupt action affecting the data feeds needed for Optiswitch.

39. The instability and uncertainty of this situation prevented Cedar from entering into Optiswitch contracts with potential customers that used the RailConnect TMS, which represented over 80% of Cedar’s target customer base.

40. On August 6-7, 2019, Brandon Parker, Andrew Parker, Jeremiah Dirnberger, and Nichole Peterson of RMI met with representatives from Cedar and mutual customer Portland Terminal Railroad Association (“PTRA”) to discuss linking Optiswitch and RailConnect through

---

<sup>22</sup> See ECF No. 31-1, **Exhibit 1** (McCrary Declaration) ¶ 9.

an API. David McCrory of PTRa explained what functionality he wanted to incorporate into Optiswitch and RailConnect and the parties discussed the feasibility of implementing his requested changes and replacing the snapshot data feeds with a continuous data exchange.<sup>23</sup> PTRa offered to pay for this improved data exchange.<sup>24</sup>

41. Following the meeting, Cedar, PTRa, and RMI communicated about the API project for one to two months. In late September 2019, RMI abruptly stopped responding to requests for updates. After one additional follow-up with PTRa on December 6, RMI stopped communicating with Cedar and PTRa entirely and the project stalled.<sup>25</sup>

42. Without an API, Optiswitch could not work as designed and the RailConnect customers who were using the product could not use it as intended.

#### **F. Cedar Developed its Own TMS After Negotiations with RMI Failed**

43. By early 2020, Cedar realized that without a reasonable guarantee of continued data sharing with RMI and an API that would enable real-time data feeds for customers' own TMS data, it could not move forward with Optiswitch unless it developed its own TMS. As a result, Cedar began developing a new TMS platform, called Automated Rail Management System ("ARMS").

44. In January 2020, Cedar won a competitive bid to build a modern TMS for Terminal Railroad of St. Louis ("TRRA"). TRRA was a RMI customer until 2015, when it switched to ShipXpress' Command product. When RMI informed TRRA it was terminating Command, TRRA chose to explore alternative TMS vendors.<sup>26</sup>

45. Cedar's software engineers possess decades of experience from Amazon, Google, Microsoft, Uber, and Docker. Furthermore, many of Cedar's employees have deep experience in the rail industry, having worked at both railroads and other rail technology

<sup>23</sup> See ECF No. 31-1, **Exhibit 1** (McCrory Declaration) ¶¶ 13-16.

<sup>24</sup> See ECF No. 31-1, **Exhibit 1** (McCrory Declaration) ¶ 17.

<sup>25</sup> See ECF No. 31-1, **Exhibit 1** (McCrory Declaration) ¶¶ 18-22; ECF No. 52-1 at G, McCrory Decl. Ex. A.

<sup>26</sup> See ECF No. 31-2, **Exhibit 2** (Mahlandt Declaration) ¶¶ 4-5, 7-8.



companies. Cedar's combined expertise in software development and the rail industry—coupled with its existing brand and customer relationships within the Shortline Railroad TMS Market from its Optiswitch product—gave Cedar a novel perspective on data management and problem solving that allowed it to create its modern TMS, ARMS, in record time.

46. ARMS is a full-featured inventory and revenue TMS platform for railroads that serves as a single source of truth for a railroad's inventory, and supports electronic data interchange across connecting railroads. ARMS offers a simplified, user-friendly system. Railroad employees can become proficient in using ARMS in approximately 30 to 60 minutes,<sup>27</sup> whereas railroad employees took weeks to become proficient in using RMI's product, RailConnect.

47. On information and belief, ARMS is also approximately 10-15% less expensive than RailConnect, making it an appealing and competitively-priced alternative to RailConnect.

48. Even before commercially launching ARMS, Cedar sold TMS services to five additional railroads, including three with RMI accounts: Burlington Junction Railway, City of Rochelle Railroad, Farmrail Corporation, Grainbelt Corporation, and North Shore Railroad Company. None had previously tried Optiswitch or had a snapshot data feed from RMI that Cedar could access.

49. ARMS was a success. Cedar migrated its first customers onto ARMS in June 2020.

#### **G. RMI Abruptly Terminated Cedar's Access to the Snapshot Feeds**

50. While RMI halted development of an API between Optiswitch and RailConnect in late 2019, from late 2019 until November 2020, RMI did not terminate Cedar's access to the snapshot feeds and never told Cedar it was no longer authorized to access the feeds. The data feeds continued to update automatically, despite the fact that the RMI customers who had tried Optiswitch were no longer using the product and no one was utilizing the data feeds.

---

<sup>27</sup> See ECF No. 31-2, **Exhibit 2** (Mahlandt Declaration) ¶ 16.



51. On information and belief, on November 4, 2020, RMI unilaterally reset the FTP login credentials for the railroads that had been using Optiswitch, without prior notice.

**H. RMI Used Coercive Means To Keep Dissatisfied Customers Locked-in to RailConnect**

52. Cedar's development of ARMS in early 2020 coincided with RMI's sun-setting of the ShipXpress TMS, Command, and efforts to force Command customers onto the RMI TMS, RailConnect. Upon learning about Cedar's new TMS, ARMS, several Command customers, including TRRA, wanted to switch to ARMS.<sup>28</sup>

53. When RMI learned that some ShipXpress customers planned to let their contracts expire and then switch to ARMS, it sent notice of termination letters to those customers, notifying them that if they did not sign a new multi-year contract for RailConnect, their TMS services would be terminated in 60 days. RMI sent such a notice of termination letter to TNW Corporation ("TNW") on January 13, 2021, stating that TNW's TMS services would be terminated in 60 days unless it executed an amendment to extend its contract's original four-year term.<sup>29</sup> On information and belief, RMI sent similar letters to other Command customers.

54. It typically takes about six months to build out a TMS for each new customer and for the customer to transition to the new system. Because it was impossible for Command customers to switch to ARMS within 60 days (as RMI knew) and they could not suffer a shutdown of their TMS, these railroads had no choice but to contract with RMI or cease operations.

55. In early- to mid-2021, RMI sent similar notice of termination letters to RailConnect customers whose contracts were about to become "evergreen," meaning that when the initial contract term expired, it would become month-to-month. Like with the Command customers, these letters threatened to cut off the RMI customers' TMS services if they did not sign a new multi-year contract for RailConnect. RMI sent PTRAs such a letter in or

<sup>28</sup> See ECF No. 31-2, **Exhibit 2** (Mahlandt Declaration) ¶¶ 8, 11.

<sup>29</sup> See ECF No. 31-3, **Exhibit 3** (Evans Declaration) ¶ 14, ECF No. 52-1 at E, Evans Decl. Ex. A (Jan. 13, 2021 Non-renewal letter from Wabtec to TNW).

1 around March 2021, threatening to terminate PTRAs access to RailConnect unless PTRAs  
 2 executed a new three-year contract.<sup>30</sup>

3 56. RMI knows that railroads must have a TMS in order to conduct business and that  
 4 it typically takes more than 60 days for a railroad to switch TMS products.<sup>31</sup> It leveraged that  
 5 knowledge by threatening to discontinue service unless customers committed to a new multi-  
 6 year contract for RailConnect. It purposefully timed its notice of termination letters to reach  
 7 customers before Cedar had time to move additional customers onto ARMS, thereby seeking to  
 8 lock-in customers to RailConnect and put Cedar out of business.

9 57. It is not feasible for shortline railroads to use more than one TMS product at one  
 10 time. On information and belief, most shortline railroads could not afford the cost of running  
 11 two TMS products simultaneously and would not choose to operate duplicative operating  
 12 systems, as it would create a risk of inconsistencies and incur substantial cost and inefficiencies.  
 13 Thus, by forcing shortline railroads into signing multi-year contracts, RMI is foreclosing those  
 14 customers from its competitors, including Cedar. In other words, RMI's contracts with its  
 15 RailConnect customers are, at least, de facto exclusive agreements that effectively foreclose  
 16 competition from competing TMS providers for at least the term of those agreements.

17 58. On information and belief, RMI also deters railroads from seeking an alternative  
 18 TMS service provider by charging onerous early termination fees for cancelling a contract with  
 19 RMI. Exorbitant early termination fees deter railroads that otherwise might seek TMS services  
 20 from another vendor.

21 59. RMI has also sought to deter railroads from switching TMS service providers by  
 22 restricting customers' access to their historical data after leaving RMI.<sup>32</sup> Railroads must have  
 23 access to historical data in order to conduct their business. For example, railroads rely on  
 24 historical data to create reports regarding business trends, growth, and revenue; and railroads  
 25

26 <sup>30</sup> See ECF No. 31-1, **Exhibit 1** (McCrory Declaration) ¶¶ 29-31.

<sup>31</sup> See ECF No. 31-3, **Exhibit 3** (Evans Declaration) ¶ 15; ECF No. 31-1, **Exhibit 1** (McCrory Declaration) ¶ 30.

27 <sup>32</sup> See ECF No. 31-3, **Exhibit 3** (Evans Declaration) ¶¶ 19-20; ECF No. 52-1 at F, Evans Decl. Ex. B.

often search historical data at the request of shippers who, for example, need to know the location or status of a particular railcar on a certain date. Railroads cannot risk a lack of access to their historical data.<sup>33</sup>

60. When TNW notified RMI that it would not renew its RailConnect contract, TNW requested a copy of its historical data or, alternatively, offered to pay RMI to keep TNW's old data online. RMI refused, making TNW's transition from RailConnect to ARMS particularly painful.<sup>34</sup> Similarly, when TRRA decided to switch to ARMS, RMI made its transition unnecessarily difficult by sending TRRA's historical data to Cedar in a disorganized format.<sup>35</sup> On information and belief, RMI has deterred other railroads considering switching TMS providers from leaving RMI by threatening to withhold their historical data or charge an exorbitant price for access to it.

61. Shortline railroad customers have told Cedar that they want to switch to ARMS, but cannot because of RMI's conduct.

#### **I. Wabtec Attempted to Acquire Cedar**

62. Since late 2019, Wabtec has made several overtures to acquire Cedar.

63. During discussions with Wabtec in 2019 that were purportedly related to integrating Optiswitch and RailConnect, it became clear that Wabtec was not willing to enter into a data-sharing arrangement with Cedar, but was instead focused on acquiring Cedar.

64. After Cedar won the bid with TRRA in January 2020 and began developing ARMS, Wabtec reached out (after falling silent in late 2019) to propose further discussions between the parties. On May 13, 2020, Brandon Parker, Senior Director of Product Management at Wabtec, emailed Steve Murray of Cedar on behalf of Wabtec Vice President Scott Holland to schedule "an informative discussion with yourself and the Cedar AI team ... to gain [an]

<sup>33</sup> See ECF No. 31-3, **Exhibit 3** (Evans Declaration) ¶¶ 21-24.

<sup>34</sup> See ECF No. 31-3, **Exhibit 3** (Evans Declaration) ¶¶ 19-20, 22-24; ECF No. 52-1 at F, Evans Decl. Ex. B.

<sup>35</sup> See ECF No. 31-2, **Exhibit 2** (Mahlandt Declaration) ¶ 15.

informative understanding of Cedar AI's product offering/strategy, to allow a better understanding of potential alignments."<sup>36</sup>

65. Wabtec requested that the parties sign a mutual non-disclosure agreement in advance of the meeting, which Cedar agreed to.<sup>37</sup>

66. On May 21, 2020, the Cedar team met with Mr. Holland who told Cedar to "stay in [its] lane" and focus on rail yard optimization (i.e., Optiswitch), rather than railcar management (i.e., ARMS). Daril Vilhena, Cedar's co-CEO, pointed out that Cedar had no choice but to create its own TMS because RMI refused to sell access to the inventory data that Optiswitch relies on. Wabtec again expressed interest in acquiring Cedar, but Cedar indicated it was not interested and the meeting ended with no planned follow-up.

67. On October 16, 2020, Mr. Holland contacted Mario Ponticello, Cedar's co-CEO and CFO, to "hear how things are going and chat a bit about what we are doing on this end."<sup>38</sup> Mr. Ponticello had a phone call with Mr. Holland shortly thereafter, in which Mr. Holland again raised the possibility of acquisition and Mr. Ponticello again declined.

68. These discussions all preceded RMI's November 4, 2020 cut-off of Cedar's access to the snapshot data feeds.

69. On March 5, 2021, nearly five months after RMI unilaterally cut off the data feeds, Mr. Holland contacted Mr. Ponticello once again to propose purchasing Cedar, and Cedar once again declined.<sup>39</sup>

70. Cedar has refused all of Wabtec's offers for various reasons, including concern that RMI would terminate ARMS as it did with ShipXpress's TMS product, Command, after acquiring it. Cedar has developed an innovative, cost-effective TMS product for shortline railroads that already has growing demand and that is positioned to pose substantial

<sup>36</sup> See ECF No. 31-16, **Exhibit 16** (May 13, 2020 email from Brandon Parker RE: Wabtec/Cedar AI Meeting).

<sup>37</sup> See ECF No. 31-16, **Exhibit 16** (May 15, 2020 email from Steve Murray to Brandon Parker RE: Wabtec/Cedar AI Meeting).

<sup>38</sup> See ECF No. 31-17, **Exhibit 17** (Oct. 16, 2020 email from Scott Holland to Mario Ponticello RE: Time to Catch Up).

<sup>39</sup> See ECF No. 31-18, **Exhibit 18** (Mar. 5, 2021 email from Scott Holland to Mario Ponticello RE: Quick Call?).

1 competition to RMI in the Shortline Railroad TMS Market, which RMI continues to dominate.  
 2 Cedar is unwilling to allow RMI to again shut down competition as it did with Command.

3 **J. RMI's Lawsuit Against Cedar is Part of its Scheme to Stifle Competition**

4 71. RMI commenced this lawsuit against Cedar on April 1, 2021, alleging that Cedar  
 5 improperly accessed and used RMI's confidential data in an attempt to gain an unfair  
 6 competitive advantage. RMI initiated the lawsuit less than a month after Cedar declined  
 7 Wabtec's most recent acquisition offer. On information and belief, RMI filed the lawsuit  
 8 because Cedar refused Wabtec's repeated acquisition overtures. The lawsuit is part of a  
 9 scheme by RMI to foreclose competition from Cedar and a means to intimidate, harass, and  
 10 coerce Cedar into selling itself to Wabtec or to drive Cedar out of business with burdensome  
 11 legal fees, thereby eliminating RMI's only real competitor in the Shortline Railroad TMS Market.

12 72. On information and belief, RMI realized that Cedar was a viable competitor in  
 13 the Shortline Railroad TMS Market after Cedar launched ARMS in June 2020. Until that point,  
 14 without its own TMS, Cedar was at the mercy of RMI and, thus, subject to its control under the  
 15 threat of RMI terminating the snapshot data feeds.

16 73. On information and belief, after RMI learned of Cedar's successful  
 17 implementation of ARMS, it decided to cry foul over Cedar's supposed reliance on the snapshot  
 18 data feeds. However, the snapshot data feeds were unnecessary for the development of  
 19 ARMS.

20 74. RMI authorized Cedar to access the snapshot data feeds, but filed this lawsuit  
 21 anyway.

22 75. RMI asserted numerous allegations that are contradicted by facts known to RMI  
 23 and Wabtec, such as: (1) Optiswitch is not a TMS; (2) GE, Wabtec, and RMI employees granted  
 24 Cedar access to multiple railroads' TMS snapshot data via an external FTP server; (3) the  
 25 snapshot data feeds were active from various dates in 2018 and 2019 until November 2020,  
 26 when RMI claims it "discovered" the feeds and shut them down; (4) Cedar was not accessing  
 27

these railroads' actual TMS systems in RailConnect because the snapshot data was uploaded to a completely separate external FTP server; (5) it would be impossible to reverse-engineer a database program as complex as a TMS from the inventory data contained in a snapshot file; and (6) the snapshot files Cedar had access to did not contain proprietary "car hire data."

76. On April 1, 2021, RMI filed its motion for expedited discovery (Dkt. 2) and the original complaint (Dkt. 1). RMI told the Court that it had allegedly noticed "unusual activity on [TMS]...namely more frequent logins and an abnormal spike in the frequency and volume of data being downloaded." (Dkt. 2 at 1:25-2:1.) RMI also represented to the Court that the only way it could identify the Doe defendants was to issue a subpoena to Amazon Web Services. *Id.* at 2:18-20. In fact, RMI knew that the snapshot data feeds had been set up for Cedar's Optiswitch users and that the feeds automatically updated at frequent intervals to keep the inventory data as accurate as possible, which would account for a large volume of simultaneous downloads occurring on 15 different railroad logins.

77. RMI filed the complaint against nascent competitor Cedar even though RMI knew that many of the factual allegations against Cedar were untrue.

78. RMI's lawsuit against Cedar is objectively baseless and intended to interfere with Cedar's business.

#### **K. The Relevant Antitrust Market and RMI's Market Power**

79. There is a relevant antitrust market for TMS products for shortline railroads ("Shortline Railroad TMS Market"). TMS products for shortline railroads provide unique, specialized functionality and tools required by shortline railroads with distinct and complex needs including, but not limited to, handling railcars at the last-mile portion of a rail network, interchanging data with Class I railroads, car ordering, car history, waybilling support, load/release/rebill processing, track control, complete inventory management, customer management, complex revenue management, and business intelligence. Because of these

specific features, there is no other product that is a reasonably interchangeable substitute for TMS products for shortline railroads.

80. The Shortline Railroad TMS Market is distinct from the TMS market for Class I railroads, such as BNSF Railway Company and Norfolk Southern. Class I railroads design and maintain their own bespoke TMS products, while shortline railroads typically use outside vendors to supply a TMS. In addition, there are a small number of shortline railroads that are provided free access to a Class I TMS product and, thus, are not included in the relevant Shortline Railroad TMS Market.

81. Shortline railroads are also distinct from third-party switchers. Third-party switchers move railcars within a rail yard, but are not intended for moving trains over a longer distance, and are not legally considered Class II or Class III railroads by the STB. Accordingly, third-party switchers have much less complex needs than shortline railroads, which have to be able to interconnect with numerous Class I and other shortline railroads. This requires a much broader set of EDI data and complex industry messaging with Railinc, a subsidiary of the Association of American Railroads (“AAR”). Thus, a TMS designed for use by a third-party switcher would be insufficient to meet the needs of a shortline railroad, and companies that provide TMS products designed for use by third-party switchers do not compete in the for Shortline Railroad TMS Market.

82. The relevant geographic market is the United States. Domestic shortline railroads source TMS products exclusively within the United States. There are no international companies that offer TMS products designed for shortline railroads operating within the United States. Shortline railroads can and do source TMS products from suppliers located anywhere within in the United States because TMS products are software solutions that can be created, customized, and used remotely from any location within the United States.

83. The Shortline Railroad TMS Market is highly concentrated and comprised of a small number of market participants. RMI has long held and continues to hold a dominant and

controlling position in the Shortline Railroad TMS Market. On information and belief, RMI has controlled over 80% share of the Shortline Railroad TMS Market for at least 10 years.

84. Today, Cedar is RMI's only major competitor in this market with an estimated market share of approximately 4%. RMI acquired its only other major competitor in the Shortline Railroad TMS Market, ShipXpress, and terminated its TMS product, Command, in 2020. There are a small number of fringe suppliers in the Shortline Railroad TMS Market, but these providers are not considered viable competitors by shortline railroads.

85. Since RailConnect's launch in the early 1990s, RMI's market position has been protected by high barriers to entry and expansion. Developing a full-fledged TMS is an enormous undertaking because it is the core processing center for a railroad's entire business operations. Thus, it requires specialized expertise and an investment of capital and time to create and maintain a TMS product that can only be marketed to a limited audience. Cedar has spent millions of dollars on developing ARMS.

86. Joey Evans of TNW explored the possibility of creating a TMS for TNW's shortline railroad, TXNW, in 2019 and determined that it was not feasible because it would take too long and cost millions of dollars.<sup>40</sup>

87. Cedar represents a competitive threat to RMI because it was able to overcome these substantial barriers to entry by leveraging its employees' unique combination of software engineering experience and shortline railroad expertise—as well as its brand and relationships with shortline railroads with respect to Optiswitch—to create a new TMS product in record time. Cedar is the only supplier to break into the Shortline Railroad TMS Market in the last decade.

88. RMI's dominant market share has given it the ability to exercise price control and charge supracompetitive prices for RailConnect for years. On information and belief, Command cost approximately half as much as RailConnect prior to ShipXpress's acquisition.

---

<sup>40</sup> See ECF No. 31-3, **Exhibit 3** (Evans Declaration) ¶ 11.



1 Cedar's TMS, ARMS, costs approximately 10-15% less than RailConnect. Despite its antiquated  
 2 technology, poor customer service, and refusal to respond to customers' requests for product  
 3 improvements, RMI continues to charge a premium price for RailConnect.

4 89. Switching TMS products is an enormous and costly undertaking for a shortline  
 5 railroad. The railroad has to ensure that historical data is transferred into the new system and  
 6 replicate all reporting and operational processes, which are typically customized by customer.  
 7 It also has to train employees on the new system.<sup>41</sup> It is also a costly undertaking, not just  
 8 because the railroad is licensing a new product.

9 90. In addition to these costs, the process of switching TMS products creates  
 10 burdens and significant risks to a shortline railroad, including potentially severe and costly  
 11 disruptions to its operations. While a TMS is offline, the railroad cannot function. When a  
 12 railroad is unable to function, inventory gets backed up, transportation delays snowball, and rail  
 13 shippers incur fees for demurrage.

14 91. The transition to a new TMS typically takes at least six months because a TMS  
 15 must be customized for each railroad.

16 92. Thus, the difficulty, costs, and risk of switching TMS products deters railroads  
 17 from seeking out alternatives to the system with which they are familiar, even if the alternative  
 18 is more efficient, innovative, and cost effective.

19 93. RMI has monopoly power over the vast majority of shortline railroads that are  
 20 locked-in to RailConnect due in part to the significant costs and burdens of changing from one  
 21 TMS product to another and the risk that RMI will terminate RailConnect before the railroad  
 22 can transition to a new TMS, should RMI suspect they are seeking to do so.

23 94. If RMI is allowed to persist in its pattern of anticompetitive acts and successfully  
 24 extinguishes the competitive threat from Cedar, it will send a strong signal to other potential  
 25  
 26

27 <sup>41</sup> See ECF No. 31-3, **Exhibit 3** (Evans Declaration) ¶ 15.

future market entrants that competition is futile, thereby further cementing its market dominance and perpetuating the harm to competition and ultimately customers.

**L. RMI's Anticompetitive Conduct Causes Harm to Competition and Consumers**

95. As detailed above, RMI, GE, and Wabtec have engaged in a pattern of anticompetitive conduct and substantially harmed competition in the Shortline Railroad TMS Market.

96. RMI, acting through its parent GE, acquired its only existing competitor, ShipXpress, in 2016 and, on information and belief, then raised the price for its TMS product, Command. Following Wabtec's acquisition of GE in February 2019, Wabtec terminated Command altogether, thereby eliminating the only competitive shortline TMS product on the market at the time.

97. Wabtec has similarly sought to eliminate Cedar as a nascent competitor through acquisition, making several overtures to Cedar since 2019.

98. Unable to eliminate Cedar through acquisition, as it had done with ShipXpress, RMI initiated a campaign to lock customers into new, multi-year contracts, knowing that those customers would then be foreclosed from switching to Cedar's new TMS product, ARMS. RMI sent notice of termination letters to customers, threatening to terminate their TMS service unless the customers signed new contracts for RailConnect. RMI's efforts had its intended effect, forcing unwilling customers, including PTR, to sign new RailConnect contracts rather than switch to the product that they wanted and that better meets their needs at a lower cost: ARMS.<sup>42</sup>

99. RMI purposefully timed its notice of termination letters to reach customers before Cedar had time to migrate more than a handful of customers onto ARMS, thereby seeking to lock-in customers to RailConnect; sabotage its only viable competitor, ARMS; and put Cedar out of business.

---

<sup>42</sup> See ECF No. 31-1, **Exhibit 1** (McCrary Declaration) ¶¶ 30-31.

100. RMI has also sought to deter railroads from switching TMS service providers by restricting customers' access to historical data after leaving RailConnect and making their transition to a new TMS product unnecessarily painful. On information and belief, this conduct is having a chilling effect on shortline railroads contemplating leaving RailConnect for ARMS, and RMI controls over 80% of the Shortline Railroad TMS Market.

101. RMI's conduct has allowed it to exercise price control, exclude competition, and eliminate or substantially reduce customer choice, and will have the effect of inhibiting technical innovation, increasing costs, reducing quality, and reducing output in the Shortline Railroad TMS Market.

102. RMI has substantially harmed competition in the Shortline Railroad TMS Market, and that reduction in competition has harmed actual and potential competing suppliers, including Cedar, as well as railroad customers.

103. There are no procompetitive benefits for RMI's conduct, which serves only to force customers to use a TMS product that is antiquated, inadequate, and supracompetitively-priced.

## **V. COUNTERCLAIMS AND THIRD-PARTY CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **(Monopolization in Violation of Section 2 of the Sherman Act (15 U.S.C. § 2))**

104. Cedar repeats and incorporates by reference all preceding paragraphs and allegations.

105. RMI provides a Shortline Railroad TMS product that is used by Class II and Class III railroads in the United States, RailConnect. Upon information and belief, RMI's Shortline Railroad TMS product, RailConnect, has an over 80% share of the Shortline Railroad TMS Market. Further, on information and belief, RMI has profitably charged prices above the competitive level in the Shortline Railroad TMS Market for a sustained amount of time. As a consequence, RMI possesses monopoly power in the Shortline Railroad TMS Market.

106. Along with a dominant share of the market, RMI also wields monopoly power because of the high costs and risk of business disruption a shortline railroad must incur in order to switch to an alternative TMS provider. As a result of its hold on the Shortline Railroad TMS Market, RMI has the ability to control prices, exclude competition, and reduce customer choice.

107. Cedar offers a unique competitive threat to RMI's dominance in the Shortline Railroad TMS Market, and RMI has acted aggressively and anticompetitively to extinguish that threat and preserve its monopoly power. Cedar offers a competitive Shortline Railroad TMS product, ARMS. However, a high quality, competitive Shortline Railroad TMS product may not be enough to cause a shortline railroad to move away from RMI because of the costs, complexities, and risks associated with switching products. Cedar's unique position stems from its simplified user-friendly technology, reduced costs, and strong reputation among shortline railroad customers. As a result, Cedar offers customers a more seamless and risk-free alternative to transition away from RMI. RMI thus has engaged in ongoing efforts to undermine Cedar, impair its products, interfere with prospective customers, and impede its ability to compete fairly for shortline railroad customers.

108. RMI has similarly interfered with the ability of other providers to compete effectively on the merits of their products. For example, in 2016, RMI acquired ShipXpress, a competitor that also offered TMS services to shortline railroads, and after Wabtec acquired RMI in 2019, it discontinued ShipXpress's competing TMS product, Command.

109. Likewise, Wabtec has attempted to acquire Cedar, making multiple overtures since 2019. Like it did with ShipXpress, Wabtec is attempting to eliminate the competitive threat to RailConnect from ARMS through acquisition.

110. Not confident that it can either compete with Cedar on the merits or eliminate it through acquisition, RMI has taken additional steps to eliminate ARMS before it gains a foothold in the market. When RMI learned that former ShipXpress customers intended to switch to Cedar's ARMS product, RMI threatened to terminate these customers' TMS services if

they did not sign a new multi-year contract for RailConnect. Upon information and belief, RMI has also coerced customers into signing long-term contracts with substantial early termination fees, thereby preventing customers from switching to alternative suppliers. In addition, RMI has restricted customers' access to historical data and made their transition to a new TMS product unnecessarily painful, seeking to deter those and other customers from switching TMS providers.

111. RMI's baseless lawsuit against Cedar is yet another anticompetitive tactic designed to exclude competition in the relevant market.

112. RMI has willfully maintained its monopoly power through exclusionary conduct designed to foreclose competition, to gain a competitive advantage, and to destroy competitors in the Shortline Railroad TMS Market. RMI's actions have had and continue to have the effect of injuring the competitive process in the entire relevant market and depriving shortline railroad customers of free choice. By creating barriers to customers seeking alternatives to its outdated and inefficient TMS, RMI has used its monopoly level of power to force many railroads that would prefer a more innovative TMS product to instead continue to use RMI's services. Further, RMI's anticompetitive conduct has foreclosed competitors, including but not limited to Cedar, from competing in a substantial share of the market. Overall, RMI's pattern of anticompetitive conduct has reduced (and continues to reduce) customer choice in the Shortline Railroad TMS Market, and will have the effect of inhibiting technical innovation, increasing costs, reducing quality, and reducing output. Furthermore, RMI's conduct does not improve its product, efficiency, or ability to compete on the merits of its Shortline Railroad TMS product. To the contrary, RMI is exercising monopoly power to prevent Cedar from competing on the merits and foreclosing the benefits that free competition would bring to the market. RMI's unlawful conduct has caused and will continue to directly and proximately cause injury or loss to interstate commerce and shortline railroad customers.

113. The conduct set forth above constitutes unreasonable and anticompetitive means by which RMI is willfully maintaining dominant monopoly power in the Shortline Railroad TMS Market, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

114. As a result of RMI's unlawful acts and the damage it has caused to free and fair competition in the Shortline Railroad TMS Market, Cedar has suffered and will continue to suffer direct and tangible injury. Cedar is entitled to injunctive and monetary relief, including treble damages and attorneys' fees, pursuant to 15 U.S.C. §§ 15 and 16. Cedar's damages are not speculative and will be proven at trial.

## **SECOND CLAIM FOR RELIEF**

### **(Attempted Monopolization in Violation of Section 2 of the Sherman Act (15 U.S.C. § 2))**

115. Cedar repeats and incorporates by reference all preceding paragraphs and allegations.

116. To the extent that RMI does not already have monopoly power, in the alternative, there is a dangerous probability that RMI will achieve monopoly power in the relevant Shortline Railroad TMS Market. RMI's anticompetitive conduct threatens to substantially eliminate competition in Shortline Railroad TMS Market and further establish RailConnect as the dominant TMS product.

117. RMI has engaged in anticompetitive conduct with the specific intent to obtain monopoly power through exclusionary and anticompetitive means. In 2016, RMI acquired its only major competitor, ShipXpress, and subsequently terminated ShipXpress's competing TMS product, Command. When Cedar launched a competing TMS product in 2020, RMI initiated an aggressive campaign to lock-up shortline railroad customers in new multi-year contracts, thereby foreclosing them from switching to Cedar's new product. RMI purposefully timed its actions to sabotage Cedar's launch of its competing product and put Cedar out of business.

118. Wabtec has repeatedly attempted to acquire Cedar, including after it launched ARMS, hoping to stifle a competitive threat to RMI's dominance in the Shortline Railroad TMS Market.

119. RMI's baseless lawsuit against Cedar is yet another anticompetitive tactic designed to exclude competition in the relevant market.

120. RMI's actions have had and continue to have the effect of injuring the competitive process in the entire relevant market and depriving customers of free choice. By creating barriers to customers seeking alternatives to its outdated and inefficient TMS, RMI seeks to force many railroads that would prefer a more innovative TMS product to instead continue to use RMI's services. Further, RMI's anticompetitive conduct has foreclosed competitors, including Cedar, from competing in a substantial share of the market, thereby creating a dangerous probability that RMI will achieve monopoly power in the relevant Shortline Railroad TMS Market.

121. Overall, RMI's pattern of anticompetitive conduct has reduced (and continues to reduce) customer choice in the Shortline Railroad TMS Market, and will have the effect of cementing RMI's dominance in the market, inhibiting technical innovation, increasing costs, reducing quality, and reducing output.

122. RMI's unlawful conduct has caused and will continue to directly and proximately cause injury or loss to interstate commerce, competitors, and shortline railroad customers.

123. The conduct set forth above constitutes unreasonable and anticompetitive means by which RMI has attempted to monopolize the Shortline Railroad TMS Market, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

124. As a result of RMI's unlawful acts and the damage it has caused to free and fair competition in the Shortline Railroad TMS Market, Cedar has suffered and will continue to suffer direct and tangible injury. Cedar is entitled to injunctive and monetary relief, including

1 treble damages and attorneys' fees, pursuant to 15 U.S.C. §§ 15 and 16. Cedar's damages are  
 2 not speculative and will be proven at trial.

### 3 **THIRD CLAIM FOR RELIEF**

#### 4 **(Monopolization in Violation of WASH. REV. CODE § 19.86.040)**

5 125. Cedar repeats and incorporates by reference all preceding paragraphs and  
 6 allegations.

7 126. RMI provides a Shortline Railroad TMS product that is used by Class II and Class  
 8 III railroads in the United States, RailConnect. Upon information and belief, RMI's Shortline  
 9 Railroad TMS product, RailConnect, has an over 80% share of the Shortline Railroad TMS  
 10 Market. Further, on information and belief, RMI has profitably charged prices above the  
 11 competitive level in the Shortline Railroad TMS Market for a sustained amount of time. As a  
 12 consequence, RMI possesses monopoly power in the Shortline Railroad TMS Market.

13 127. Along with a dominant share of the market, RMI also wields monopoly power  
 14 because of the high costs and risk of business disruption a shortline railroad must incur in order  
 15 to switch to an alternative TMS provider. As a result of its hold on the Shortline Railroad TMS  
 16 Market, RMI has the ability to control prices, exclude competition, and reduce customer choice.

17 128. Cedar offers a unique competitive threat to RMI's dominance in the Shortline  
 18 Railroad TMS Market, and RMI has acted aggressively and anticompetitively to extinguish that  
 19 threat and preserve its monopoly power. Cedar offers a competitive Shortline Railroad TMS  
 20 product, ARMS. However, a high quality, competitive Shortline Railroad TMS may not be  
 21 enough to cause a shortline railroad to move away from RMI because of the costs,  
 22 complexities, and risks associated with switching products. Cedar's unique position stems from  
 23 its simplified user-friendly technology, reduced costs, and strong reputation among shortline  
 24 railroad customers. As a result, Cedar offers customers a more seamless and risk-free  
 25 alternative to transition away from RMI. RMI thus has engaged in ongoing efforts to undermine  
 26  
 27



1 Cedar, impair its products, interfere with prospective customers, and impede its ability to  
2 compete fairly for shortline railroad customers.

3 129. RMI has similarly interfered with the ability of other providers to compete  
4 effectively on the merits of their products. For example, in 2016, RMI acquired ShipXpress, a  
5 competitor that also offered TMS services to shortline railroads, and after Wabtec acquired RMI  
6 in 2019, Wabtec discontinued ShipXpress's competing TMS product, Command.

7 130. Likewise, Wabtec has made repeated overtures to attempt to acquire Cedar.  
8 Like it did with ShipXpress, Wabtec is attempting to eliminate the competitive threat to  
9 RailConnect from ARMS through acquisition.

10 131. Not confident that it can either compete with Cedar on the merits or eliminate it  
11 through acquisition, RMI has taken additional steps to eliminate ARMS before it gains a  
12 foothold in the market. When RMI learned that former ShipXpress customers intended to  
13 switch to Cedar's ARMS product, RMI threatened to terminate these customers' TMS services if  
14 they did not sign a new multi-year contract for RailConnect. Upon information and belief, RMI  
15 has also coerced customers into signing long-term contracts with substantial early termination  
16 fees, thereby preventing customers from switching to alternative suppliers. RMI's lawsuit  
17 against Cedar is yet another anticompetitive tactic designed to exclude competition in the  
18 relevant market. In addition, RMI has restricted customers' access to historical data and made  
19 their transition to a new TMS product unnecessarily painful, seeking to deter those and other  
20 customers from switching TMS providers.

21 132. RMI has willfully maintained its monopoly power through exclusionary conduct  
22 designed to foreclose competition, to gain a competitive advantage, and to destroy competitors  
23 in the United States market. RMI's actions have had and continue to have the effect of injuring  
24 the competitive process in the entire relevant market and depriving shortline railroad  
25 customers of free choice. By creating barriers to customers seeking alternatives to its outdated  
26 and inefficient TMS, RMI has used its monopoly level of power to force many railroads that  
27

would prefer a more innovative TMS product to instead continue to use RMI's services. Further, RMI's anticompetitive conduct has foreclosed competitors, including Cedar, from competing in a substantial share of the market. Overall, RMI's pattern of anticompetitive conduct has reduced (and continues to reduce) customer choice in the Shortline Railroad TMS Market, and will have the effect of inhibiting technical innovation, increasing costs, reducing quality, and reducing output. Furthermore, RMI's conduct does not improve its product, efficiency, or ability to compete on the merits of its Shortline Railroad TMS product. To the contrary, RMI is exercising monopoly power to prevent Cedar from competing on the merits and foreclosing the benefits that free competition would bring to the market. RMI's unlawful conduct has caused and will continue to directly and proximately cause injury or loss to interstate commerce and shortline railroad customers.

133. The conduct set forth above constitutes unreasonable and anticompetitive means by which RMI is willfully maintaining dominant monopoly power in the Shortline Railroad TMS Market, in violation of Washington's Consumer Protection Act (CPA), WASH. REV. CODE § 19.86.040.

134. As a result of RMI's unlawful acts and the damage it has caused to free and fair competition in the Shortline Railroad TMS Market, Cedar has suffered and will continue to suffer direct and tangible injury. Cedar is entitled to injunctive and monetary relief, including treble damages and attorneys' fees, and civil penalties pursuant to WASH. REV. CODE §§ 19.86.090 and 19.86.140. Cedar's damages are not speculative and will be proven at trial.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Attempted Monopolization in Violation of WASH. REV. CODE § 19.86.040)**

135. Cedar repeats and incorporates by reference all preceding paragraphs and allegations.

136. To the extent that RMI does not already have monopoly power, in the alternative, there is a dangerous probability that RMI will achieve monopoly power in the

relevant Shortline Railroad TMS Market. RMI's anticompetitive conduct threatens to substantially eliminate competition in Shortline Railroad TMS Market and further establish RailConnect as the dominant TMS product.

137. RMI has engaged in anticompetitive conduct with the specific intent to obtain monopoly power through exclusionary and anticompetitive means. In 2016, RMI acquired its only major competitor, ShipXpress, and subsequently terminated ShipXpress's competing TMS product, Command. When Cedar launched a competing TMS product in 2020, RMI initiated an aggressive campaign to lock-up shortline railroad customers in new multi-year contracts, thereby foreclosing them from switching to Cedar's new product. RMI purposefully timed its actions to sabotage Cedar's launch of its competing product and put Cedar out of business.

138. Wabtec has repeatedly attempted to acquire Cedar, including after it launched ARMS, hoping to stifle a competitive threat to RMI's dominance in the Shortline Railroad TMS Market.

139. RMI's baseless lawsuit against Cedar is yet another anticompetitive tactic designed to exclude competition in the relevant market.

140. RMI's actions have had and continue to have the effect of injuring the competitive process in the entire relevant market and depriving customers of free choice. By creating barriers to customers seeking alternatives to its outdated and inefficient TMS, RMI seeks to force many railroads that would prefer a more innovative TMS product to instead continue to use RMI's services. Further, RMI's anticompetitive conduct has foreclosed competitors, including Cedar, from competing in a substantial share of the market, thereby creating a dangerous probability that RMI will achieve monopoly power in the relevant Shortline Railroad TMS Market.

141. Overall, RMI's pattern of anticompetitive conduct has reduced (and continues to reduce) customer choice in the Shortline Railroad TMS Market, and will have the effect of

1 cementing RMI's dominance in the market, inhibiting technical innovation, increasing costs,  
2 reducing quality, and reducing output.

3 142. RMI's unlawful conduct has caused and will continue to directly and proximately  
4 cause injury or loss to interstate commerce, competitors and shortline railroad customers.

5 143. The conduct set forth above constitutes unreasonable and anticompetitive  
6 means by which RMI has attempted to monopolize the Shortline Railroad TMS Market, in  
7 violation of Washington's Consumer Protection Act (CPA), WASH. REV. CODE § 19.86.040.

8 144. As a result of RMI's unlawful acts and the damage it has caused to free and fair  
9 competition in the Shortline Railroad TMS Market, Cedar has suffered and will continue to  
10 suffer direct and tangible injury. Cedar is entitled to injunctive and monetary relief, including  
11 treble damages and attorneys' fees, and civil penalties pursuant to WASH. REV. CODE  
12 §§ 19.86.090 and 19.86.140. Cedar's damages are not speculative and will be proven at trial.

#### 13 **FIFTH CLAIM FOR RELIEF**

##### 14 **(Refusal to Deal in Violation of Section 2 of the Sherman Act (15 U.S.C. § 2))**

15 145. Cedar repeats and incorporates by reference all preceding paragraphs and  
16 allegations.

17 146. RMI is the dominant player in the Shortline Railroad TMS Market, with over 80%  
18 market share. Along with a dominant share of the market, RMI also wields monopoly power  
19 because of the high costs and risk of business disruption a shortline railroad must incur in order  
20 to switch to an alternative TMS provider. As a result of its hold on the Shortline Railroad TMS  
21 Market, RMI has the ability to control prices and exclude competition. Accordingly, RMI  
22 possesses monopoly power in the Shortline Railroad TMS Market.

23 147. RMI engaged in a voluntary course of dealing with Cedar from 2018 to 2020. In  
24 2018, Cedar told RMI about Optiswitch and how it could complement RailConnect and benefit  
25 RMI's RailConnect customers by analyzing the inventory data that railroads stored in their  
26 TMSs. RMI expressed interest in a strategic business alignment, and from May 2018 to  
27

November 2020, RMI provided TMS inventory data via snapshot feeds to Cedar for 15 railroads to enable them to use Optiswitch. However, RMI rejected Cedar's and customers' repeated attempts to reach a commercial agreement to pay for real-time access to the data exported from RailConnect, conditioning such an arrangement on Wabtec acquiring Cedar. In November 2020, RMI suddenly and without warning reset all the FTP login credentials for those railroads and denied Cedar access to the snapshot data feeds. RMI abruptly terminated Cedar's data access only after Cedar launched its own competing shortline railroad TMS product, ARMS.

148. RMI has forsaken short-term profits by refusing to enter into a data-sharing arrangement with Cedar under which Cedar or customers would pay for access to data exported from RailConnect, in an attempt to harm Cedar and prevent Cedar from successfully launching Optiswitch and gaining a toehold with shortline railroad customers.

149. RMI unilaterally terminated a voluntary and potentially profitable course of dealing with Cedar, acting against its economic interest. RMI has no legitimate business rationale for refusing to deal with Cedar.

150. RMI's actions have had and continue to have the effect of injuring the competitive process and depriving shortline railroad customers of free choice, inhibiting technological innovation, and reducing quality and output. Furthermore, RMI's conduct does not improve its product, efficiency, or ability to compete on the merits. RMI's unlawful conduct has caused and will continue to directly and proximately cause injury or loss to interstate commerce and shortline railroad customers.

151. RMI's refusal to deal with Cedar violates the Sherman Act, 15 U.S.C. § 2.

152. As a result of RMI's unlawful acts, Cedar has suffered and will continue to suffer direct and tangible injury. Cedar is entitled to injunctive and monetary relief, including treble damages and attorneys' fees, pursuant to 15 U.S.C. §§ 15 and 16. Cedar's damages are not speculative and will be proven at trial.

**SIXTH CLAIM FOR RELIEF****(Tortious Interference with Business Expectancy)**

153. Cedar repeats and incorporates by reference all preceding paragraphs and allegations.

154. RMI has intentionally interfered with Cedar's business relationships and expectancies with respect to its Optiswitch and ARMS products.

155. Cedar had business expectancies with at least 15 railroads that were enthusiastic about using Cedar's rail yard switching optimization program, Optiswitch. In 2018, Cedar told RMI about Optiswitch and how it could benefit shortline railroad customers by analyzing the inventory data that railroads store in their TMSs and improving their efficiency. RMI provided inventory data to Cedar for 15 RailConnect customers, all of which began using Optiswitch, but Cedar could not execute contracts with those railroads because RMI refused to enter into a data-sharing arrangement with Cedar, and Cedar's continued access to the railroads' data was therefore unreliable. Initially, RMI expressed interest in a strategic business alignment, but it strung along Cedar and its railroad customers for nearly two years until it became clear that those customers would never be able to use Optiswitch with RailConnect permanently.

156. RMI intentionally prevented Cedar from realizing these business expectancies even though Optiswitch was not in direct competition with RailConnect. In fact, Optiswitch depended on snapshot data feeds exported from RailConnect to operate and would have provided a huge increase in value for railroads that used RailConnect in conjunction with Optiswitch.

157. On November 4, 2020, RMI unilaterally revoked Cedar's authorization to use TMS inventory data via snapshot data feeds that they had previously granted for the 15 railroads trying Optiswitch by resetting the FTP login credentials for those railroads without notice. This revocation cut off those railroads' ability to use Optiswitch. RMI's conduct, therefore, caused these 15 railroads to end their business relationships with Cedar.

158. RMI's conduct prevented Cedar from continuing to market Optiswitch because RMI already controlled over 80% of the Shortline Railroad TMS Market.

159. RMI has also intentionally interfered with Cedar's ability to market and enter into contracts for its TMS product, ARMS. When RMI learned that some former ShipXpress customers, such as TNW, were going to let their RMI contracts expire and then switch to ARMS, RMI sent notice of termination letters to those customers, threatening them with termination of services unless they signed a new multi-year contract with RMI. RMI employed this tactic as soon as it learned that Cedar had won a bid to create a new TMS for TRRA and would create competition in the Shortline Railroad TMS Market.

160. RMI's conduct, therefore, prevented Cedar from contracting with railroads that seek innovative TMS technology and robust support. Thus, RMI intentionally interfered for an improper purpose—to harm Cedar and strengthen its monopoly—and caused Cedar to lose potential business opportunities with the railroads, such as TNW, who had expressed interest in switching to ARMS.

161. RMI's intentional interference with Cedar's business expectancies has harmed Cedar by preventing it from realizing a return on its substantial investment in the development of Optiswitch and ARMS. Cedar's damages are not speculative and will be proven at trial.

#### **SEVENTH CLAIM FOR RELIEF**

##### **(Unfair Methods of Competition in Violation of WASH. REV. CODE § 19.86.020)**

162. Cedar repeats and incorporates by reference all preceding paragraphs and allegations.

163. RMI engaged in unfair methods of competition and deceptive and unfair practices and acts that were injurious to the public interest and did not constitute legitimate business practices.

164. RMI unfairly interfered with Cedar's existing and potential business relationships with existing and potential Optiswitch customers. After Cedar developed Optiswitch, RMI

expressed interest in a strategic business alignment with Cedar and provided TMS inventory data for 15 railroads using RailConnect. But RMI refused to link Optiswitch and RailConnect through an API or other real-time data-sharing arrangement unless Wabtec acquired Cedar. This prevented Cedar from entering into contractual relationships with those 15 railroads. In November 2020, RMI revoked Cedar's authorization to use TMS inventory data without notice by unilaterally resetting the FTP login credentials for those railroads and thus preventing those railroads from using Optiswitch. RMI's actions were deceptive and unfair, and not justified by any legitimate business purpose.

165. RMI's deceptive and unfair practices prevented railroads from benefiting from Optiswitch's groundbreaking rail yard optimization tool, causing injury to railroads and the public.

166. Cedar has been injured directly by RMI's deceptive and unfair practices with respect to Optiswitch, including the loss of existing business relationships with 15 railroads and potential business relationships with countless other railroads.

167. In addition, RMI has acquired and willfully maintained a monopoly in the Shortline Railroad TMS Market through unfair methods of competition. For example, RMI acquired its only existing competitor in the market, ShipXpress, and retired its competing product. Wabtec has similarly attempted to acquire Cedar in order to thwart its competitive threat in the Shortline Railroad TMS Market. RMI also threatened to terminate its existing customers' TMS services unless they agreed to sign multi-year contracts with RMI, effectively precluding them from switching to an alternative TMS supplier like Cedar. RMI has also coerced customers into signing long-term contracts with substantial early termination fees, which prevents customers from switching to alternative suppliers, and has restricted customers' access to their historical data, which deters customers from switching TMS providers. RMI's lawsuit against Cedar is yet another anticompetitive tactic designed to exclude competition in the relevant market. As alleged above, Cedar took substantial and reasonable steps to enter



the Shortline Railroad TMS Market and has been injured directly by RMI's unfair methods of competition.

168. Cedar is entitled to injunctive and monetary relief, including treble damages and attorneys' fees, and civil penalties pursuant to WASH. REV. CODE §§ 19.86.090 and 19.86.140. Cedar's damages are not speculative and will be proven at trial.

## VI. PRAYER FOR RELIEF

WHEREFORE, Counterclaim Plaintiff Cedar respectfully requests that judgment be entered in its favor on each of the foregoing claims for relief, and that this Court enter an Order:

A. Enjoining Counterclaim and Third-Party Defendants RMI and Wabtec from engaging in further anticompetitive, tortious and unfair conduct;

B. Awarding Cedar damages in an amount to be proven at trial, trebled pursuant to 15 U.S.C. § 15(a) and WASH. REV. CODE § 19.86.090;

C. Awarding Cedar its attorneys' fees, pursuant to at least 15 U.S.C. §§ 15(a) and 1117(a), and WASH. REV. CODE § 19.186.150;

D. Awarding Cedar its costs;

E. Awarding Cedar pre- and post-judgment interest, to the extent allowable; and

F. Awarding such other and further relief as equity and justice may require.

//

//

//

//

//

//

//

//

1 RESPECTFULLY SUBMITTED AND DATED this 28th day of September, 2022.

2 TERRELL MARSHALL LAW GROUP PLLC

3 By: /s/ Adrienne D. McEntee, WSBA #34061

4 Beth E. Terrell, WSBA #26759

5 Email: bterrell@terrellmarshall.com

6 Adrienne D. McEntee, WSBA #34061

7 Email: amcentee@terrellmarshall.com

8 Eden B. Nordby, WSBA #58654

9 Email: enordby@terrellmarshall.com

10 936 North 34th Street, Suite 300

11 Seattle, Washington 98103-8869

12 Telephone: (206) 816-6603

13 Facsimile: (206) 319-5450

14 MORRISON & FOERSTER LLP

15 By: /s/ Bonnie Lau

16 Bonnie Lau (*admitted pro hac vice*)

17 Email: blau@mofo.com

18 Margaret A. Webb (*admitted pro hac vice*)

19 Email: mwebb@mofo.com

20 425 Market Street

21 San Francisco, CA 94105

22 Telephone: (415) 268-7000

23 Facsimile: (415) 268-7522

24 David D. Cross (*admitted pro hac vice*)

25 Email: dcross@mofo.com

26 Mary G. Kaiser (*admitted pro hac vice*)

27 Email: mkaiser@mofo.com

2100 L Street NW, Suite 900

Washington, DC 20037

Telephone: (202) 887-1500

Facsimile: (202) 887-0763

*Attorneys for Defendants and Counterclaim Plaintiff*